Attachments 18-19

Cecil E. Roberts, President

United Mine Workers of America

Testimony before the

House Committee on Education and Labor on

H.R. 5663; MINER SAFETY & HEALTH ACT OF 2010

Tuesday, July 13, 2010

Hearing Room 2175

Rayburn House Office Building

Washington, D.C.

Thank you for inviting me to address the Education and Labor Committee about this important legislation. As President of the United Mine Workers of America ("UMWA"), I represent the union that has been an unwavering advocate for miners' health and safety for 120 years. I am pleased to have this opportunity to speak in support of H.R. 5663. It addresses some very serious problems that have been highlighted this year in the coal industry as well as other industries.

This Committee plays a significant role in advancing miners' health and safety. We are deeply appreciative of the leadership you have shown in trying to protect and enhance the health and safety of all miners. Your continued oversight is essential. We share with you the common goal of wanting to ensure that all miners will go home safely and in good health after the workers' shifts each and every day.

This Committee knows all too well that the status quo is inadequate; this year 40 coal miners have died at work -- and we are barely half way through the year! The horrific Upper Big Branch disaster claimed 29 underground coal miners. But eleven other coal miners also died - one or two at a time. We can and must do a better job of protecting our nation's miners.

I have testified before this Committee as well as before Senate Committees about some of the shortcomings in the existing laws and about problems MSHA confronts in enforcing the law. H.R. 5663 addresses many of the issues we have been discussing. I will review some of the current problems that demand attention,

then speak about how the proposed legislation will address those problems; and I will make a few suggestions to further improve the proposed legislation.

A fundamental problem MSHA confronts is how to deal with operators that habitually violate the law. Voicing her apparent frustration on this very point after

yet another miner died, on July 1 Secretary of Labor Hilda Solis issued a press release in which she stated:

...31 of the 40 coal mine fatalities that have occurred in 2010 have occurred at Massey mines. We have issued citations, closure orders, stop orders, and fines to get Massey to take its safety responsibility seriously. Earlier today, the U.S. Attorney in the Southern District of West Virginia announced four Massey supervisors will be charged criminally stemming from a MSHA and FBI investigation into the deaths of two miners at a Massey mine in 2006. But yet again, today we mourn the tragic loss of another miner whose safety was entrusted to Massey Energy (emphasis added.)

Clearly, the status quo isn't good enough. MSHA's efforts have failed to motivate at least some mine operators, like Massey, to do what is necessary to operate their mines safely each and every day. We know many operators are performing much better. In fact, of the 40 coal fatalities in 2010, not one was at a union operation.

Even before the Upper Big Branch disaster in April, we met here to discuss how the huge and growing backlog at the Federal Mine Safety and Review Commission ("FMSHRC") was undermining miners' health and safety. While more Administrative Law Judges have been hired to deal with FMSHRC cases since I testified in February, there remains the problem of operators routinely challenging MSHA citations in an effort to delay resolution of their outstanding citations and orders -- whether to delay paying the penalties or to avoid the enhanced fines that attach to repeat violations, or to escape the challenging Pattern

of Violation enforcement tool MSHA has threatened to use. And though Congress increased fines when it passed the MINER Act of 2006, because citations and orders are being regularly challenged, that new fine structure has not served to induce better compliance.

After a citation is fully litigated and there remains no further issue about an operator's obligation to pay a particular penalty, as it stands today a mine with unpaid fines can continue its production notwithstanding a lengthy delinquency. We understand that there is more than \$27 million in unpaid fines resulting from MSHA final orders! One way to avoid any such delinquencies would be to require all assessed fines to be placed into an escrow account, as we have previously suggested.

Consistent with the expectation that all fines shall be paid close in time to the violation, the proposed legislation provides that when due process procedures have been exhausted, the operator must promptly pay its fines. And while MSHA has claimed uncertainty about its authority to take action against an operator with delinquent fines, the legislation will give MSHA the ability to temporarily close a mine if fines are not paid within 180 days. We think that's fair: operators that work within the legal framework shouldn't have to compete against those who flaunt the system.

MSHA also has been uncertain about its authority to take immediate action to shut down a mine when it observes violations the Agency believes place miners' health and safety at immediate risk. The proposed legislation addresses this by granting MSHA the authority to seek injunctive relief when it believes the operation is pursuing a course of conduct that jeopardizes miners' safety or health.

This is sorely needed.

Another shortcoming with the existing framework concerns the criminal penalties in the Mine Act. They have been insufficient to coerce the compliance we need. First, the criminal sanctions only amount to misdemeanors -- a virtual slap on the wrist -- even though the consequences for Mine Act violations can be deadly. We know it can be difficult for a government agency to convince a prosecutor to pursue a case for Mine Act misdemeanors. This means that some who could have been prosecuted under the applicable legal standards likely escaped criminal prosecution simply because the criminal sanctions now available to prosecutors are too mild.

More importantly, the top-level people who create and maintain the corporate policies that put company profits ahead of workers' safety have been permitted to remain in power and to continue their misguided practices while their subordinates have to take the blame, including any criminal liability. We believe

that CEOs and corporate Boards of Directors should be held accountable; they should have to take responsibility when systemic health and safety problems are evident within a company. H.R. 5663 would provide these changes: it imposes criminal penalties for "knowingly" taking actions that directly or indirectly hurt workers, and makes a felony any such conduct, with jail time increased from a one year maximum to five year maximum for a first offense and ten years for a second offense, and the fines increased from a maximum of \$250,000 to \$1 million, or \$2 million for a second offense. It also makes it easier to prosecute corporate representatives who knowingly authorize, order, or carry out policies or practices that contribute to safety and health violations. We fully support these

improvements to the criminal penalties.

Even though the existing law requires MSHA inspections to occur unannounced, we have all heard stories about the many ways operators game the system so inspectors will not discover unsafe work practices or conditions. When this Committee visited Beckley for its hearing with Upper Big Branch families, you heard reports about the various signals and codes that were relayed underground (such as, "we've got a man on the property" from Gary Quarles testimony on 5.24.10) before the inspectors could arrive on a section, allowing managers to direct make-shift changes to avoid getting cited. And when MSHA took over the communication stations upon arrival at a couple of operations in Kentucky during recent blitz inspections, MSHA inspectors discovered many more violations than had previously been discovered – violations that likely would have been covered- up and gone undetected if the special warning codes were allowed to continue. To deal with these issues, the proposed legislation increases the criminal

penalties for those who give notice, and requires information about the criminal penalties to be posted at mines so all miners will be on notice that giving any kind

of notice about an MSHA inspection is improper and constitutes a very serious violation of the Act.

There has been a lot of discussion about the Pattern of Violation ("POV") tool that MSHA has long had a right to use, but which has not been effectively utilized. MSHA has alerted some operators about their being vulnerable to being put into a Pattern and this has generally been successful in accomplishing some short-term improvements. This happens because being put onto a POV is properly perceived as being a dramatic event that would be hard to ever escape. However, MSHA has been both too hard and too easy in its prior use of the POV. It is too hard insofar as if any mine would actually be placed into a POV (as opposed to just getting a warning notice about the possibility), under the current scheme it would be nearly impossible for the mine to ever again operate; once the POV attaches miners must be withdrawn if MSHA finds any S&S violation. But even the most-attentive operator may not be able to avoid all violations all the time.

For

example, barometric pressure changes can quickly give rise to an S&S violation.

MSHA's current POV protocol is also too easy insofar as after MSHA issues a POV warning notice the Agency only requires a 30% reduction in the short run for an operator to be relieved of the extra scrutiny. It is too easy for an operator to

demonstrate short-term improvements without making the wholesale changes needed to render the mine safe on a long-term basis. The focus of a POV program should be to capture the attention of management and miners alike to affect a

wholesale cultural change -- to make everyone at the unusually hazardous operation aware of what may be comprehensive problems, and to make sure they learn and practice different and safer work practices. The improvements should be fully integrated so the mine operates more safely going forward on a long-term basis, not just long enough to get the mine off MSHA's watch list.

Rather than the punitive POV model now in place, the legislation seeks to turn the POV into a rehabilitation program. It provides for MSHA to tailor any remediation to the particular operation: if MSHA determines that more training would be helpful, it could require that; if the mine would benefit from a comprehensive health and safety program, the Agency could mandate that one be designed and implemented. The legislation also mandates a doubling of the inspections while the operation remains in POV status, as well as a doubling of the fines after 180 days if adequate improvements are not accomplished. An operation would remain in POV status for at least one year, which should be long enough to ensure that the new practices are actually working. Finally, MSHA plans to measure a mine's success against objective benchmarks, properly comparing any operation to other mines of similar kind and size.

The proposal also would provide more immediacy in MSHA's assessment of an operation: MSHA would evaluate a mine's safety record for POV purposes based on contemporaneous citations and orders MSHA inspectors would be writing, rather than measuring a mine's safety record based on final orders that now can take years to process. Because contested citations are now caught up in a very long backlog at the FMSHRC, by using only final orders for POV purposes (as MSHA now does) the Agency could be placing a mine on a POV in 2010 based on its unsafe conduct from 2008, because it could take that long for the underlying orders to become final. From a safety management point of view this doesn't make sense. A mine with poor safety practices in 2008 should be placed in the POV status in 2008 -- when the added scrutiny is most needed, not years later when the various legal challenges get resolved. Likewise, if management at an operation with numerous S&S citations and withdrawal orders in 2008 recognized

it had serious problems with its safety practices and initiated changes that yielded

significant improvements, under the current scheme that mine might be vulnerable to a POV in 2010, after its safety practices had improved.

The POV tool is an extreme one and should be available for MSHA to help put an immediate end to unsafe work practices before miners get hurt. It is precisely when MSHA inspectors are writing an unusually large number of citations and orders that a mine should receive the extra attention POV anticipates,

not years later when those citations – if contested – finally become final orders. And because the overwhelming percentage of citations and orders that MSHA inspectors write are upheld even when contested, there is no serious issue about due process based on a POV process that is prompted by written citations as opposed to final orders. In FY 2009, only 4-11% of litigated penalties related to unwarrantable failure and S&S citations ended up being withdrawn or dismissed. With a POV program re-focused on rehabilitation rather than punishment, and given the small withdrawal and dismissal rate, it is fully consistent with the protective purposes of the Mine Act to err on the side of safety and accept this modest margin of error. The proposed legislation would make the POV program more remedial and less punitive, which we support. The goal must be to turn operations with the worst health and safety records into much safer operations, and to teach the miners and managers about what is required to operate safely so they will do so on a long-term basis.

A related issue that also affects the POV program arises from the current system for accident and injury reporting. Operators are required to report on all accidents and injuries and to file quarterly reports with MSHA. However, the reporting process is now badly flawed. Operators go to extraordinary lengths to dissuade their employees from ever filing accident reports even when an injury is serious. Some would rather pay an employee with a broken back to perform light duty than have him report the injury. While we have heard stories about these practices for years, former Massey employee Jeff Harris testified about his personal knowledge of this practice when he addressed the Senate HELP Committee on April 27, 2010.

To the extent that accident and injury reports constitute a factor used in measuring an operator's relative safety record for POV status, all operations should

be obligated to report accidents and injuries pursuant to the same objective standard. This is an area where changes may be required for H.R. 5663. Only if accident and injury reports are regularly and reliably filed can we learn about

dangerous mining practices, and about problems with equipment. If reports are not provided when all accidents occur, the same problems are more likely to recur. There is no place for subjectivity; rather, all accidents and injuries should be reported so the mining community can learn from our collective experiences. Top level mine management should also be required to sign off on the reports -- both to ensure that the personnel with the power to make changes (when needed) actually know about the accidents at an operation, and to provide much-needed accountability.

A strength of the proposed legislation concerns the entities from which MSHA would receive and maintain accident and injury data. As it stands today, MSHA reports do not relate the health and safety records of an operator's contractors to the operator itself. Yet, if an operator would be required to take

responsibility for those working on its property, that operator would be more attentive to its contractors' safety records and start demanding better health and safety performance. A disproportionately high rate of accidents is attributable to contractors, so this change is warranted. And while any operator could be demanding better compliance with mine safety laws and regulations, operators generally have made no effort to exercise this power. Imposing the legal requirement is appropriate and should effect better contractor compliance with Mine Act requirements.

Miners continue to be intimidated into working in an unsafe manner, and this has got to change. As you heard at the Beckley WV hearing in May 2010, and as Jeff Harris testified before the Senate HELP Committee in April 2010, miners have provided testimony about how difficult it is for them to raise safety concerns at a non-union mine. Even when they know that their work environment is dangerous, miners are reluctant to voice safety issues because jobs are scarce -and coal-mining jobs pay well. The testimony confirmed that a miner working at a non-union operation has good reason to fear losing his job for complaining about unsafe conditions. But no miner should have to choose between earning a good paycheck (while praying he will survive) and working safely. No worker should feel he is jeopardizing his family's economic security by raising bona fide work concerns on the job. And no miner should be told he needs to find another job when he tries to exercise the statutory right to refuse unsafe work, as coal miner Steve Morgan reported his 21-year old son Adam Morgan was told by his boss at the Upper Big Branch mine before perishing in the April 5 disaster. In short, the anti-discrimination protections in the existing law are terribly important, but they

don't go far enough to protect miners. H.R. 5663 addresses this continuing problem by making sure that miners are specifically trained each year about their safety rights, and authorizing punitive damages and criminal penalties for retaliation against miners who blow the whistle on unsafe conditions.

As for accident investigations, the Act requires MSHA to investigate all serious accidents. However, it now does so with one arm essentially tied behind its back. This results from the fact that MSHA investigative interviews are conducted on a volunteer basis. That is, MSHA identifies who might have helpful information and invites them to meet with the Agency. Any individual may decline MSHA's invitation. Likewise any witness can leave the interview at any

time. The only exception lies with the public hearing option, for which MSHA has the power to subpoena witnesses and documents, but which has rarely been used. We think MSHA should have the subpoena power for all accident investigations, not just for a public hearing component of an accident investigation as is expected to occur as part of the Upper Big Branch investigation. By providing MSHA with the subpoena power MSHA could speak with anyone it thinks has relevant information to contribute and it would give MSHA broader authority to review records. We also think that granting the Agency subpoena power for inspections would better protect miners who may wish to speak with MSHA inspectors. The legislation would make these changes.

In the aftermath of the Upper Big Branch tragedy, we urged MSHA to conduct a public hearing for its primary investigation for multiple reasons: only by

doing so could it utilize its subpoena power; and we believe that allowing an open hearing would permit more issues to be more fully explored, reducing the possibility that some less popular but still any feasible theories about root causes

would be overlooked. Yet, MSHA chose to conduct this investigation largely behind closed doors. We think that procedure creates needless problems. And while MSHA plans to conduct a separate investigation into its own conduct as it relates to the Upper Big Branch mine, such an internal investigation could produce issues that bear on the primary investigation. It would be best if all such issues would be raised, considered, and resolved at the same time, not sequentially. We also believe that MSHA should not be the one investigating its own conduct, but an independent investigation team should perform this analysis. The proposed legislation addresses this by requiring a parallel and coordinated investigation to be

performed under the direction of NIOSH for all accidents involving three or more fatalities. The independent team would include knowledgeable participants from other interested entities, including employer and worker representatives. We think this procedure will help assure the mining community, Congress, and the public at large that the investigation is thorough.

However, the proposed legislation should be adjusted to incorporate a role for the miners' representative to participate fully in all accident investigations.

For

some of the more recent multi-fatal accident investigations, even though the UMWA was designated as a miners' representative, the UMWA was excluded from the accident interviews. The miners' representatives are permitted to join in the underground investigation, but little more. Without being allowed to join the interviews, the miners' representative cannot fully represent the miners at the operation who have selected such a representative.

The Upper Big Branch investigation is another current MSHA accident investigation in which the UMWA has been excluded from the interviews even though the Union has been designated as the miners' representative for miners at that operation. The government has claimed that the on-going criminal investigation justifies MSHA's closed-door investigation and the exclusion of the miners' representative. Yet, for another investigation now taking place – that following the BP explosion in late April -- there is also a parallel criminal investigation. If simultaneous civil and criminal investigations are feasible in that

context we believe it should also be viable for accident investigations within MSHA's jurisdiction. We thus urge a change in the legislation to specifically provide for miners' representatives to fully participate in all accident investigations. After all, miners who made their designation have a significant interest in learning what happened, and they may be returning to work at the same operation. They should have a seat at the table in the form of their designated representative.

There has also been a recurring problem with the process of designating a Section 103(f) miners' representative after a disaster occurs at a non-union operation. The Act does not presently provide for a family member to designate a miners' representative on behalf of a miner who is trapped or dies in a mine accident. The proposed legislation would change this, so that the family member may exercise the right to designate a miners' representative if the miner is unable to exercise his right due to a mine accident.

Though we don't yet have official information from the accident investigation, it is generally believed that inadequate rock dusting exacerbated the

Upper Big Branch explosion. This legislation would require more protective rock dust standards. To reduce the likelihood of dangerous coal dust explosions, the Bill also requires the use of technology to better monitor rock dust compliance.

To the extent the proposed legislation anticipates MSHA rulemaking and

authorizes the Agency to exercise new and expanded responsibilities, we wish to note that it will require full funding for these new mandates. I think we can all agree that it would be far better to support a pro-active MSHA than to fund yet more large-accident investigations.

Finally, the UMWA is in support of those provisions of the proposed legislation that would fall within OSHA's jurisdiction.

Thank you for allowing me to speak about H.R. 5663; we look forward to

working with you to pass it into law.

Cecil E. Roberts, President
United Mine Workers of America
Testimony before the
House Committee on Education and the Workforce,
Full Committee on Workforce Protections on
Learning from the Upper Big Branch Tragedy

Tuesday, March 27, 2012 Hearing Room 2175 Rayburn House Office Building Washington, D.C.

Thank you for the opportunity to address the House Committee on Education and the Workforce, Full Committee on Workforce Protections about Learning from the Upper Big Branch Tragedy. I am the International President of the United Mine Workers of America (UMWA), a union that has been an unwavering advocate for miners' health and safety for over 122 years.

Before I speak about what we can learn from the Upper Big Branch tragedy, I want to acknowledge all of the families that lost a loved one and neighbors who lost a friend in the senseless methane/coal dust explosion on April 5, 2010. The 29 families all suffered a loss that we can never forget. The victims paid with their lives for the deliberate greed of Don Blankenship and his underlings.

The UMWA has long held that three things are necessary for a safe and productive mine:

- An operator who is willing to follow the law.
- An agency which fully enforces the law.
- Workers who are empowered to speak out for themselves.

None of these things happened at the non-union UBB mine.

Don Blankenship's team pursued a game of cat and mouse with the Mine Safety and Health Administration (MSHA). While MSHA inspectors were trying to determine whether Massey was following mine health and safety laws and regulations, as all operators are required to do,

Blankenship's management was regularly doing what it could to *subvert* MSHA's efforts. Every day they did that, they jeopardized the safety of all miners working under their control and direction. On April 5, 2010, the vulnerable miners at the Upper Big Branch mine fell victim to the needlessly dangerous and neglected mine environment.

It is not a secret in the coalfields that some operators give advance notice to miners working underground of MSHA inspections. Mine Managers make quick and superficial adjustments to the ventilation, quickly rockdust the entries where an inspector would be headed or shut down production entirely on a working section in order to avoid being cited for violating MSHA's standards. Through the work of the United States Attorney's office in Charleston, West Virginia, we finally have public confirmation from one of the Massey managers who affirmatively engaged in such deceptive practices. Earlier this month, Upper Big Branch Mine Superintendent Gary May gave testimony in Hughie Elbert Stover's sentencing hearing about that mine's practice and system for providing information to miners working underground whenever federal and state safety inspectors were on the property, with details about where the inspectors would be traveling and inspecting. Stover was convicted and sentenced to three years in prison on February 29, 2012. Mr. May further explained that he acted deliberately to change underground mining conditions to make them temporarily appear better and more compliant than they had been while the mine was actively operating but before learning about the inspector's underground presence.

We don't mean to claim that Massey and its subsidiaries had a monopoly on these illegal practices, but its rogue attitude had become an integral part of the operating culture at the Upper Big Branch mine. It became so bad that miners came to view the unlawful mining practices as the norm. Some of the more experienced miners probably knew that what Massey was doing was wrong, but they had to work. Tolerating unsafe conditions was necessary if they wanted to keep their jobs. On a daily basis, these miners worked in an atmosphere of fear and intimidation. However, there can be no question that for Don Blankenship and his Massey mines, production was the top priority; and the second priority; and the third priority... This is demonstrated by the October 19, 2005 memo Don Blankenship sent to All Deep Mine Superintendents entitled "Running Coal" which stated "If any of you have been asked by your group presidents, your supervisors, engineers or anyone else to do anything other than run coal

(i.e. – build overcasts, do construction jobs, or whatever), you need to ignore them and run coal. This memo is necessary only because we seem not to understand that the coal pays the bills."

One stark example of Massey's unlawful behavior was revealed in the report from MSHA's Internal Review where it described Massey's frequent re-staging of its continuous mining machines/mechanized mining units (MMU's) to avoid citations for excessive respirable dust. Cutting coal creates mine dust that must be both reduced and controlled through ventilation, water sprays and rock dust to protect miners' lungs and to prevent explosive coal dust accumulations. Autopsy records of the UBB miners who were killed in the explosion uncovered surprisingly high levels of black lung and other lung disease within this workforce, including among the youngest victims. Seeing what the Internal Review discovered about MSHA's ineffective enforcement of the respirable dust standard (30 CFR Part 70) at UBB suggests miners at this operation were often exposed to excessive levels of respirable dust.

MSHA's regulations set maximum permissible respirable dust levels and require reductions to the dust levels depending on how much quartz is also present. However, as the Internal Review explained, MSHA District 4 allowed Massey to re-establish (that is, to increase) its permissible dust levels whenever it rotated its MMUs. Therefore, even though MSHA would establish a reduced respirable dust level for a certain area based on the level of respirable coal dust and the percentage of quartz generated by a MMU, Massey was able to avoid compliance with that reduced respirable dust standard simply by rotating out the MMU that was used to set the reduced level. With a different MMU in place, MSHA terminated any citation that was issued for excessive dust and allowed Massey to operate its replacement MMU with dust at the unreduced standard of 2.0 mg/m³ even though the same amount of quartz would have been present. This deliberate manipulation of the dust standard, established by the law, was the practice according to the Internal Review. MSHA District 4 also regularly allowed Massey to have abnormally long abatement periods for its dust citations. Massey was manipulating the law and too often MSHA District 4 allowed the company to get away with it.

MSHA's Internal Review outlines numerous deficiencies on the part of the Agency. These MSHA shortcomings, in particular MSHA District 4, allowed miners to remain in harm's way though the Agency should and could have prevented such exposures. In other words, although Massey failed in its duty to comply with mine safety laws and regulations, MSHA had a duty to utilize every enforcement tool at its disposal so that miners' safety would not be jeopardized. Massey made MSHA's job much more difficult by its subterfuge, but that doesn't excuse or explain MSHA's shortcomings.

We now know that MSHA District 4 inspectors failed to:

- Inspect some areas of the mine (including in its last inspection, the Old No. 2 Section and the belt/return entries of Tailgate #22 tailgate, both areas where the explosion propagated), and rushed their inspections through other areas.
- Cite lack of adequate roof support controls that the roof control plan specified.
- Identify inadequacies in the coal and coal dust program including failures in the cleaning of loose coal, coal dust and float coal dust and the extent and duration of noncompliance with rock dust standards along belt conveyors.
- Use current rock dust survey procedures and to collect spot samples from older sections of the mine to see that UBB had the required incombustible content of rock dust to mine dust.
- Scrutinize the operator's examination records and require timely abatement of hazards cited and consider the hazards for purposes of determining the operator's degree of negligence.

MSHA District 4 Supervisors, who had jurisdiction over the Upper Big Branch mine, did not provide effective oversight of the inspectors. District 4 failed to:

- Conduct 110 (c) special investigations (to determine if mine management knowingly violated mandatory standards) when established protocols indicated that would have been appropriate in six cases.
- Forward to MSHA's Arlington Headquarters eight violations that should have been considered for "flagrant" violations.

Further, in reviewing mining plans for approval, experienced MSHA District 4 personnel made a number of mistakes, including:

- Not requiring methods in the ventilation plan that would mitigate methane inundations like the one that occurred in 2004.
- Not recognizing that (a) the roof control plan did not provide necessary pillar stability for ventilation in some areas and (b) the roof control plan did not include any of the required stability calculations to show the plan would be adequate.

MSHA headquarters also failed to:

- Realize due to a computer glitch that the mine's violation history qualified UBB for the "Potential Pattern of Violation" list.
- Use or distribute its directives and policies effectively, some of which conflicted with each other. MSHA employees did not always understand the policies.
- Ensure that all entry-level or journeymen inspectors had the required training. Some of those responsible for inspecting or supervising inspectors at Upper Big Branch did not have all the required training. MSHA's own policy does not permit entrylevel inspectors to travel by themselves, which occurred at UBB.

The scope of internal MSHA problems ran from top to bottom. However, MSHA District 4 Supervisors dropped the ball by ignoring several red flags as I previously stated.

The Internal Reviews following the previous five underground coal mine tragedies of the preceding decade (Jim Walter Resources in 2001; Sago, Aracoma and Darby in 2006; and Crandall Canyon in 2007) identified a number of problems that persisted into 2010. It is time that we stop talking about these problems and fix them.

While it may be appropriate to criticize the mistakes MSHA made before the UBB tragedy, it would be a huge disservice to the miners who perished at UBB and to their families if that is all we did. Instead, we should think proactively and take affirmative steps to make mines safer.

Immediately after the Upper Big Branch tragedy MSHA began its program of impact inspections, targeting operations where it has reason to be concerned about Mine Act compliance. MSHA captures the mine communications system to prevent advance warnings of inspections. MSHA's impact inspections have uncovered large numbers of significant and potentially dangerous conditions. The Agency has also gone to court to test its authority to seek injunctions. These techniques have been successful in preventing operators from continuing to operate in the most hazardous of conditions.

Even a more aggressive MSHA, one that uses the array of enforcement tools never used before the UBB tragedy, cannot protect miners if mine operators continue to flaunt the law. And too many do.

The UBB disaster serves as a stark reminder that the culture of production over health and safety still exists in the coalfields. Don Blankenship and Massey represented the worst of the coal industry. They flagrantly violated and ignored the law at the expense of the miners. Don Blankenship's philosophy cost the lives of 29 miners at UBB and countless others that lost their lives at Massey's mines.

The UMWA applauds the U.S. Attorney's office for pursuing criminal prosecution against individuals who contributed to the April 5, 2010 tragedy at UBB. However, allowing Don Blankenship to walk away from the crimes he and his underlings committed at UBB would be a gross miscarriage of justice. He laid out the rules under which UBB operated and kept a watchful eye to ensure that his policies were being followed. Don Blankenship should be prosecuted for his actions and I stand here today saying to this Committee that until corporate heads like Don Blankenship are held accountable for their actions, we have not witnessed the last senseless tragedy and loss of life in the coal industry.

What is also upsetting to me is the misdemeanor plea deal that federal prosecutors recently reached in the 2007 deaths of nine workers at the Crandall Canyon Mine in Utah. Murray Energy's subsidiary, Genwal

Resources, agreed to plead guilty to two mine safety crimes and pay \$250,000 for each of the two criminal counts. The travesty of justice is that the plea agreement states that no charges will be brought against any Genwal mine managers or any executives. Once again, the real guilty parties escaped justice. I guess the cost of nine lives is \$500,000.

MSHA cannot be everywhere all of the time. That is why the law correctly charges operators with the duty of operating in a safe and healthful way. If an operator wants the privilege of running a coal mine, it must assume the obligation of doing so in a way that doesn't put its employees' lives in jeopardy. Yet, this doesn't always happen. Too often corporate greed takes precedence. We urge Congress to increase the penalties for egregious mine health and safety violations.

So what else can we do to reduce the likelihood of any more coal mining disasters? We owe it to all miners to learn from the problems that led to the Upper Big Branch tragedy as well as from other disasters.

What this Committee and Congress does really matters to the coal miners of this nation. After the Sago mine disaster and others in 2006, Congress required that coal operators make underground shelters available to protect miners who survive but cannot escape an explosion or mine fire. Despite the tremendous explosive forces that rocked the Upper Big Branch mine, a shelter near the explosion survived intact and could have sheltered miners if they had survived the explosion. That Strata shelter was under water for weeks, and yet it remained dry inside. Had that shelter been at the Sago mine in January 2006, eleven of the twelve miners killed would still be with us today. Without Congress advancing the issue in the 2006 MINER Act, we still would not have shelters underground.

Again, through the MINER Act, Congress required significant improvements in tracking and communications' technology and equipment. Coal operators claimed it couldn't be done, or the costs were too high to allow them to remain in business, but Congress appreciated that changes were necessary and demanded that the industry implement the improvements. By legislating these changes, there was a flurry of imaginative and creative work done to develop practical equipment that could survive the harsh mine environment. These state of the art systems are in place all over the United States today.

We appreciate that some operators are spending more money on equipment and technology to make the mine environment safer for miners. However, more improvements can be made. For example, rock dust sampling results are not completed in a timely fashion. The mine environment can become extremely explosive in a very short period of time if rock dust is not applied regularly. Rock dust is required to minimize the explosiveness of coal dust in case there is an ignition source present. While better and newer dust explosibility meters exist, most operators – as well as MSHA – are not purchasing them because they are not required to use them. This equipment can provide immediate, real time information about the incombustibility of rock dust to coal dust levels. Instead, the current protocol provides for the samples to be sent to MSHA's lab, where the Agency uses antiquated equipment to test the samples. It takes 2-3 weeks to return the results. I would like to point out that operators like Consol, Patriot and Alpha are taking advantage of this new technology. At Upper Big Branch, samples taken before the April 5 explosion showed that the mine had inadequate rock dust - but those sample results were not reported until after the disaster. We are left to wonder whether having the results in real time would have averted this disaster.

The illegal practice of advance notice of safety inspections is not limited to Upper Big Branch but occurs at many operations. MSHA's recent tactic of taking control of the communications systems when inspectors travel to operations has demonstrated that advance notice is not uncommon: the kind and extent of violations found when the communications are taken over exceed those MSHA had previously discovered. Clearly, the existing penalties for advance notice are ineffective and should be increased to help effect compliance.

Another area where the Mine Act should be updated concerns its whistleblower protections. The Mine Act was one of the first to provide whistleblower protections against discrimination or retaliation for reporting safety violations. However, these provisions are now inferior to recent and more-protective whistleblower provisions included in other statutes. Miners under the Mine Act now have only 60 days to blow the whistle. This window should be lengthened to give miners a better chance to pursue actions when they suffer discrimination or retaliation for exercising their health and safety rights.

The compensation provisions in Section 111 of the Mine Act should also be expanded. As it now stands, miners generally can collect no more than one week's worth of wages when an operator's violations require MSHA to shut down the mine. Too often miners have to make the choice between putting food on the table and protecting their own safety. By expanding the compensation provisions, miners' health and safety would be better protected.

MSHA's accident investigation procedures must also be modernized. The UMWA has always advocated that an independent agency should conduct all accident investigations much like the National Transportation Safety Board. Asking MSHA to critique its own actions following a disaster does not always lead to the most objective point of view. We further believe that the law should be changed to include in the investigation those most affected: the miners and family members of deceased miners. We also believe that MSHA must have the power to subpoena witnesses, rather than rely on voluntary interviews.

The UMWA is not convinced that any one action by MSHA would have resulted in substantially better compliance on the part of Massey. It is clear that UBB should not have been operating at the time of the explosion. Had MSHA District 4 used all of the enforcement tools at their disposal, the disaster may have been prevented. However, no one should ever lose sight that Massey Energy, including Don Blankenship and his underlings, were mandated by law to comply with all health and safety standards and maintain UBB in a safe operating condition. Instead, the mine was operated in a manner compliant with a corporate policy that put production over safety. This is why I will once again call for the criminal prosecution of these individuals.

The authors of the Internal Review have recommended that the Assistant Secretary consider rulemaking that would modify several health and safety standards. The recommendations are found in Appendix C – Recommendations for Regulatory Changes. There are 23 separate provisions outlined in Appendix C, all of which would improve health and safety protections for miners. The UMWA is in complete agreement with these recommendations in addition to the changes we outlined in our report.

This gets me to my last point. Congress needs to act quickly to pass legislation that will build on the protections of the 2006 Miner Act. As Congress so eloquently stated in the Act: "the first priority and concern of all in the coal or other mining industry must be the health and safety of its most precious resource – the miner."

In conclusion, I thank you for the chance to appear before this Committee and appreciate your interest and concern for miners' health and safety.

Attachments 20-29

UNITED MINE WORKERS

MAY-JUNE 2015

126TH YEAR, NO. 3

- INSIDE Convention to build on proud past
 Navajo workers say UMWA Yes!

MSHA releases review of new dust rule

he Mine Safety and Health Administration (MSHA) has released compliance information collected during the first eight months under the final rule, Lowering Miners' Exposure to Respirable Coal Mine Dust, Including Continuous Personal Dust Monitors. The initial data demonstrate that about 99 percent of the more than 41,000 samples taken in that period were in compliance. MSHA noted that these samples included both underground and surface coal mining operations, with the bulk of them collected underground.

"The union is encouraged by the level of compliance with the new rule," stated President Roberts. "We are still extremely interested in how the rule will impact the occurrence

of black lung disease among active miners in the long run. That will be the true test of its effectiveness."

MSHA also noted

that the yearly average dust concentrations measured at designated mining occupations dropped to histori-

cally low levels. The agency attributes these reductions to the final rule

UNITED MINE WORKERS

and the End Black Lung—Act Now campaign that was started in 2009. The data demonstrate that the rule is highly achievable and is working to protect miners.

"This is certainly good news for coal miners," said Secretary-Treasurer Kane. "I think everyone at the union who reviewed the final rule believed that despite the operators' strong opposition, it was a feasible and necessary next step to protect miners' exposure to coal mine respirable dust. We will continue to push for additional sampling at surface mines and locations designated as 'hot spots' by the National Institute for Occupational Safety and Health (NIOSH)."

NIOSH estimates that since 1968, the year before the passage of the Coal Act, more than 76,000 miners have died as the result of black lung disease. Unfortunately, evidence indicates that miners, including younger miners that have worked exclusively under the Coal Act of 1969 and the 1977 Mine Safety and Health Act, continue to contract the disease.

Despite these staggering figures and the ongoing occurrences of the disease, mine operators have filed suit against MSHA to halt the rule's final

implementation. Oral arguments were heard on Mar. 5 by the U.S. Eleventh Circuit Court of Appeals in Jacksonville, Fla. No decision date has been set.

Black Lung Benefits Act



The U.S. Department of Labor is requesting public comments on its recently published Black Lung Benefits Act rule. The rule would afford miners greater access to their health records. It would require all parties involved in a black lung benefits case to exchange all medical data gathered as a result of the claim. It is believed that this would protect miners by affording them all information about their health. Currently, the coal company can develop as much medical data as it can afford, and pick and choose what to submit.

The rule would also require operators to pay all the awards due in the claim before it can be challenged through modification. Coal companies who routinely challenge awards have stopped paying benefits during the modification process, despite being obligated to make such payments.

Appalachia's unionized coal mines are safer and more productive

he global financial and analytical firm SNL Financials Energy Sector recently released a report that shows unionized coal mines in the Appalachian Basin are not only safer but more productive than nonunion operations in the same geographic region. SNL analyzed reportable accidents, illness and injuries along with production data collected from the Mine Safety and Health Administration (MSHA) to arrive at its conclusion. The information included Calendar Years 2013 and 2014, the most recent available from MSHA.

The analysis showed that for all operating underground coal mines in those years, average production per miner at union operations was 3.6 tons per man in 2013 and 4.09 in 2014. Nonunion operations totaled 3.08 and 3.54 respectively in those same years. The report also notes that the two-year data collection shows that on average, union operations incurred a reportable accident for every 86,546 tons of coal loaded, while nonunion operations reported an accident for every 73,599 tons.

"The information in this report should come as no surprise to anyone who follows the industry," said President Roberts. "The UMWA has known for years, based on our own internal analysis, that mines where employees are represented by the union are safer, and as a result, more productive. This report simply reinforces that reality."

The SNL report credited MSHA's increased enforcement scrutiny of mines and "the increasing sophistication and professionalization of United Mine Workers of America's safety programs" for the safety trend.

Despite the conclusions reached by SNL's review, industry representatives appeared to ignore the report's findings and instead continue to focus solely on dollars and cents. A representative of the Kentucky Coal Association failed

to acknowledge the health, safety or production information in the report and noted, "At a time when costs are a serious concern due to the price of our product, any additional costs in an organized workforce would be a concern."

"This is a perfect example of no matter how some things change, others continue to remain the same," said Secretary-Treasurer Kane. "You have a report from an independent source echoing the facts the union has been aware of for years, and the operators are tone-deaf. It makes it obvious that despite their rhetoric, it's simply production first, health and safety be damned."

Coal health and safety training scheduled

The Health and Safety Department has scheduled the annual coal mine training at the Mine Safety and Health Academy in Beckley, W.Va. Classes are set for Sept.13–18 and Oct. 25–30, 2015, with each session limited to 70 participants. The department will send relevant information and applications to all coal locals in June. If there are any questions, please contact the department at 703-291-2433.

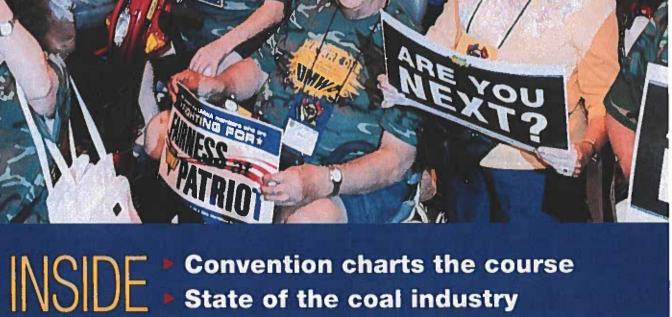
Mine Safety and Health Academy

Sept 13-18

Oct. 25-30

UNITED MINE WORKERS 126TH YEAR, NO. 4 JULY-AUGUST 2015

NEXT?



Comprehensive mine safety legislation

Sens. Joe Manchin (D-W.Va.) and Bob Casey (D-Pa.) recently put forward legislation aimed at enhancing miners' health and safety. The Robert C. Byrd Mine Safety Protection Act of 2015 (S. 1145), named after the former West Virginia senator and mine health and safety champion, is the most recent attempt in the Senate to close some glaring loopholes in coal mine safety.

"The proposed legislation would address several issues the UMWA has been pushing for years," said President Roberts. "One of the most important provisions is giving the Mine Safety and Health Administration (MSHA) the authority to shut down mines that have repeated and significant safety problems. If MSHA had been permitted to take this type of action in 2009, perhaps 29 miners at Upper Big Branch would still be alive today."

Other provisions of the bill would significantly increase monetary penalties for operators who knowingly expose miners to serious risk of bodily injury or death. The bill would also increase the severity of the designation from a misdemeanor to a felony. And for the first

time ever, the legislation would give MSHA the ability to subpoena material information and compel witnesses to testify during the course of inspections or investigations. The agency currently lacks such authority, a problem that has been highlighted many times in the past.

"Miners across the country should not only thank Sens. Casey and Manchin for introducing this legislation, they should also push their own senators to support it," said Secretary-Treasurer Kane. "The bill is not only forward-looking in its approach to protecting miners, it also takes a hard look at mine operators who are delinquent in paying fines for violations for which they have been cited in the past. It's hard to believe that in this day and age, an operator can refuse to pay hundreds of thousands of dollars in fines and still be permitted to mine coal. That is unconscionable."

The UMWA is doing all it can to see that this new legislation moves through the committee process and is adopted by the whole Senate. It is important to contact your senators and urge them to help pass S. 1145 into law.

Hazard inspections

at healthcare facilities

The Occupational Safety and Health Administration (OSHA) has issued a bulletin to its inspectors in an attempt to focus greater emphasis on the most common causes of workplace illnesses and injuries among healthcare workers. The agency announced that it will expand the use of its enforcement resources to combat the root cause of these incidents among workers in all areas of the healthcare profession.

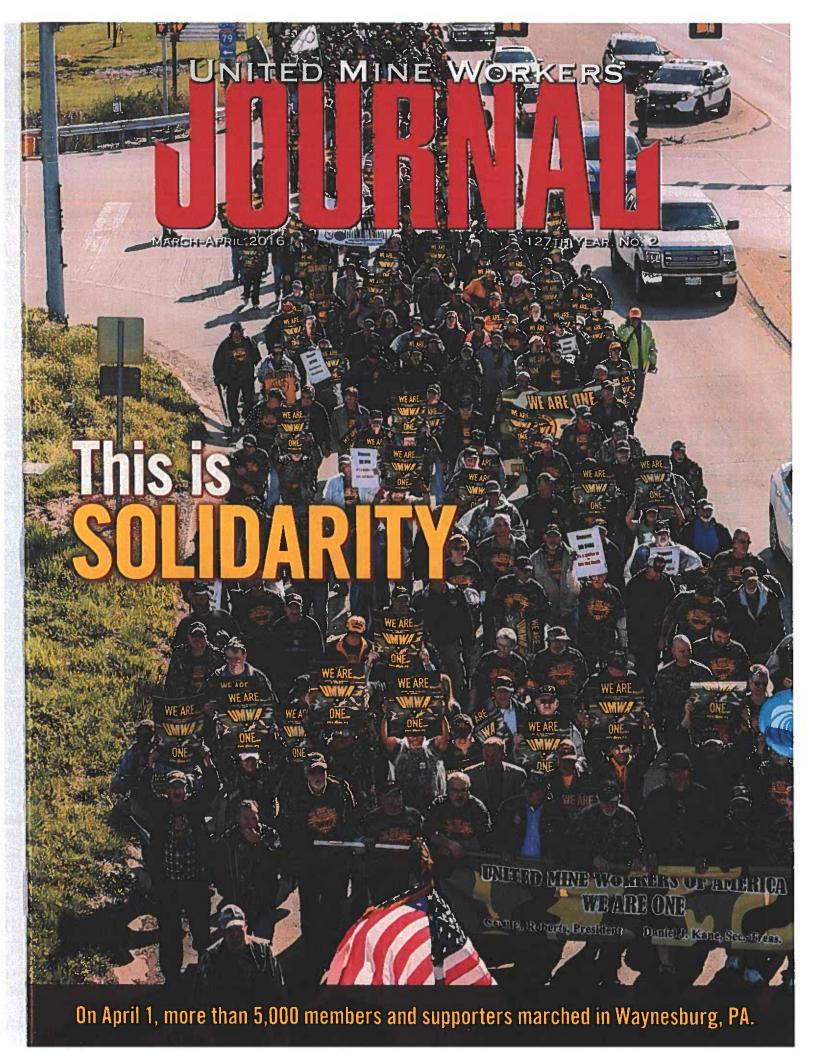
OSHA specifically placed extra emphasis on eliminating the causes of musculoskeletal disorders related to patient handling, blood-borne pathogens, workplace violence, tuberculosis and slips, trips and falls. The directive noted that "workers in hospitals, nursing homes and long-term care facilities have workplace illness and injury rates that are among the highest in the country, and virtually all of them are preventable." The most recent reports from 2013 show that in hospitals alone, the incident rate among workers is 6.4 work-related injuries for every 100 full-time employees.

"The accident frequency rate among healthcare workers across the board is unacceptable," stated Secretary-Treasurer Kane. "It's even worse at nursing home and long-term care facilities, which are the places where many of our members work. We will



be working very hard in the next several years to address this problem and protect our members."

OSHA has provided employers at these facilities with educational, training and resource materials to assist in identifying and preventing these incidents. The purpose of the current initiative is to ensure that employers implement necessary changes that will decrease worker exposure to these hazards.



THE NEXT PHASE OF

MSHA Dust Regulation takes effect

Phase II of the Mine Safety and Health Administration's (MSHA or Agency) final rule, Lowering Miners' Exposure to Respirable Coal Mine Dust, Including Continuous Personal Dust Monitors went into effect on February 1. This is the second stage of the three-step Rule initially implemented on August 14, 2014. Phase III will take effect on August 1, 2016.

The Regulation, which took years to promulgate, faced various legal challenges from mine operators in an attempt to block its implementation. Among the laundry list of objections, operators challenged the Agency's authority to issue the Rule under the Federal Mine Safety and Health Act of 1977 and claimed that MSHA can only act jointly on any such Rule with the Secretary of Health and Human Services and NIOSH. The petitioners also challenged "the substance of the rule" with various objections, including arguing that the regulation allows "too wide a variation" for sampling.

After an extensive review of the Rule, when it was initially issued, the UMWA expressed qualified support for the Agency's effort. "The Union is pleased with many aspects of the Dust Rule," stated Secretary-Treasurer Kane. "Our position has not changed from August of 2014. The Rule ad-

dresses some of the concerns the Union has expressed for decades, while it falls short in adding necessary protections for many miners throughout the coal fields. In particular, the UMWA does not believe it adequately monitors workers outby the face areas. And the continuous dust monitor will not be used to monitor dust exposure for surface miners or miners who work on the surface areas of underground mines. Is it better than previous regulations for coal mine dust? Yes. Is it as protective as we would like it to be? No."

This phase requires mine operators to use the Continuous Personal Dust Monitor (CPDM) when sampling certain underground occupations, including miners with evidence of black lung disease, Part 90 miners. The CPDM records real time dust exposure for miners and also calculates the projected exposure should a miner continue to work in the same dust levels for the entire shift, including anything over 8 hours. This permits mine operators and individual miners to take immediate action during the shift to prevent overexposure to respi-

The next phase of the Dust Rule will require many miners to use the latest generation CPDM, like the one pictured here.

rable coal mine dust. The Rule would also require mine operators to post individual sample results on the mine bulletin board within twelve hours after the sampling is completed. Part 90 miners would be given a printed copy of all sampling results.

"This is certainly a step in the right direction," stated President Roberts. "The application of the CPDM is something that the Union sees as a potential benefit to miners in managing the atmosphere where they work in real time. We need to make certain these dust monitors are properly maintained and utilized to benefit every miner at the operations."

The final phase of the Dust Rule will take effect on August 1, 2016 and reduce a miners' exposure to coal dust from 2.0 mg/m³ to 1.5 mg/m³. The total concentration of dust a miner is exposed to would be averaged over the duration of the shift actually worked.

UMWA Health and Safety Classes Scheduled

The Department of Occupational Health and Safety has scheduled training classes at the Mine Safety and Health Academy in Beckley, West Virginia. The classes will be held from September 12th through the 16th and October 17th through the 21st, 2016. Both classes will include surface and underground training. The Department will be sending registration information to all active UMWA Local Unions in the near future.

UNITED MINE WORKERS

MAY-JUNE 2016

127th YEAR, No. 3

"It's time to move this fight to the Nations' Capitol."

- Cecil E. Roberts

MSHA DELAYED USE OF Continuous Personal Dust Mon

The Mine Safety and Health Administration (MSHA or Agency) temporarily delayed the implementation of key elements of its final rule, Lowering Miners' Exposure to Respirable Coal Mine Dust, Including Continuous Personal Dust Monitors, which went into effect on February 1. The Agency had determined that the use of the Continuous Personal Dust Monitor (CPDM) may cause electro-

problems. The Agency did point out that it is the responsibility of mine operators to ensure the introduction of new equipment or technology is compatible with machinery already operating at the facility. Operators were required to resume dust sampling on that date.

"This was truly a disturbing revelation," said President Roberts.
"It is understandable that the intro-

"The UMWA is **pleased** the problem with the **CPDM** was **corrected** in a timely fashion, allowing this **critical** technology to be used **shortly** after the problem was **discovered**."

-PRESIDENT ROBERTS

magnetic interference when used near machines equipped with Proximity Detection Systems (PDS), disabling protections designed to stop the machine before contacting a miner.

According to MSHA's notice, delaying the use of the CPDM solved the immediate problem with the PDS. It has also determined that other devices commonly used underground, including gas detectors, communication devices, laser range finders, trailing cables and variable frequency devices may adversely affect the PDS. The problems were initially made public in a release to coal operators on April 8, just two months after Phase II of the Dust Rule became effective.

The Agency lifted the delay on May 2 citing the three-week delay was sufficient time for mine operators to correct any interference duction of new technology can cause unknown problems in any workplace and this can be especially true in a mining environment. However, testing of the CPDM and PDS has been ongoing for years by multiple agencies and mine operators and these types of situations should have been identified prior to implementation of Phase II of the Rule. The silver lining

this matter
is that no one was
placed in serious danger or injured
before the problem was corrected."

with

regard to

"I must admit that when I first learned about the problem I was a bit irritated," said Secretary-Treasurer Kane. "I think it's fair to say that sometime during all these tests that these types of issues should have been discovered and corrected. The Union has been pushing for years to have technology that gives miners more control over the hazards they are exposed to in the mine. It is fair to say that any delay after all these years was not welcomed by anyone concerned about health and safety, but a minor suspension to assure the devices worked properly and did not pose a risk to miners was acceptable under the circumstances."

UMWA to take action on **MSHA's Compliance Assistance Program**

The International Union's Department of Occupational Health and Safety has reviewed the Mine Safety and Health Administrations newly instituted Compliance Assistance Program (CAP). The Department does not have a problem with the CAP program in principle, provided it does not interfere with mandatory inspections of the mines and miners are afforded walk-around rights during all such events. The UMWA has had conversations with several Local Unions regarding this matter and filed a 105(c) complaint to ensure miners will be permitted to accompany MSHA inspectors. The Department will keep each Local Union informed of the status of the complaint.

UNITED MINE WORKERS

JULY-AUGUST 2016

127TH YEAR, NO. 4

WE ARE GOING TO WASHINGTON, DC.

Together we will win this Struggle

Mine Health and Safety Academy turns

The federal Mine Health and Safety Academy (Academy) in Beckley, WV turned 40 years old on August 17th. It is one of nine Academies, including the U.S Military Academies, that is operated by the Federal Government and the only one dedicated to improving health and safety conditions in U.S. Mines.

While the UMWA is one of the most ardent and vocal supporters of the construction and funding of the Academy, the Union does recognize the enormous efforts of the late Senator Robert C. Byrd (D-WV). "The Union has always been the leading advocate for coal mine health and safety and that will never change," said President Roberts. "However, we can-

not for one minute forget the efforts of Senator Byrd. He truly was one of the best friends miners ever had."

The Union conducts training classes for all UMWA Local Unions, both underground and surface operations, annually at the Academy. These classes are normally scheduled in the late fall and are designed to keep the membership up to speed on the latest regulations and technologies in the mining industry.

June 15, 2006, also marked the 10th Anniversary of the 2006 Mine Improvement and New Emergency Response Act (MINER Act). The Act requires operators of underground coal mines to improve accident preparedness. The legislation man-

dates that mining companies develop an emergency response plan specific to each mine they operate, and requires that every mine

have at least two rescue teams located within one hour. It also increased both civil and criminal penalties for violations of federal mining safety standards. Passage of the 2006 MIN-ER Act was the first and only time the federal Mine Safety and Health Act has ever been amended.

FINAL PHASE OF

MSHA Dust Rule takes effect

n August 1st, Phase III of the Mine Safety and Health Administration's final rule, Lowering Miners' Exposure to Respirable Coal Mine **Dust, Including Continuous Personal Dust Monitors**, went into effect. The August implementation was the culmination of a two year long process of increasing monitoring frequency of respirable coal mine dust, using the latest technology and lowering the concentration limits of respirable dust permitted in the mine atmosphere. The overall concentration of respirable dust permitted in coal mines is reduced from 2.0 to 1.5 milligrams per cubic meter of air. The standard for Part 90 miners and for air used to ventilate places where miners work is reduced from 1.0 to 0.5 milligrams per cubic meter of air.

Despite almost continuous objections from many coal operators, who complained that the Rule was too

restrictive and therefore impossible to achieve, the most recent sampling data does not support

their opposition. Of more than 20,000 samples taken under Phase II of the Rule, between April 1 and June 30 with the Continuous Personal Dust Monitor, 99 percent were in compliance. This is the same percentage of the 87,000 samples taken under Phase I of the new Standard.

"The Union is very pleased with the implementation of the new federal Dust Standard," stated Secretary-Treasurer Kane.

"There is no doubt that the Union would have preferred additional sampling at all mining operations, especially surface operations and Anthracite mines. But from a practical perspective the Rule, as it is written, is doing what it is supposed to do. Anything that reduces health risks to miners is always welcome."

UNITED MINE WORKERS

JANUARY-FEBRUARY 2017

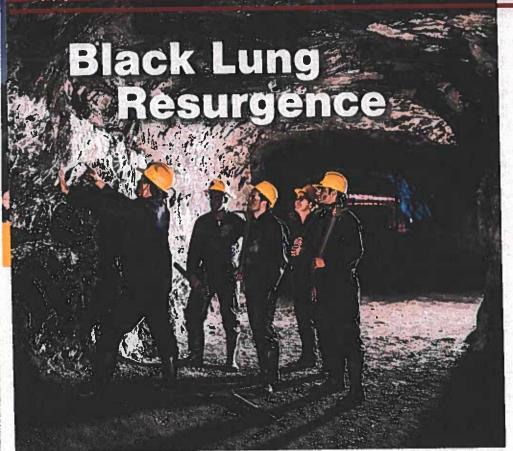
128TH YEAR, NO.

A Promise is Forever. The Fight Continues

INSIDE:

A Message from President Roberts
NEW INTERNATIONAL OFFICERS NAMED





espite the best efforts of the United States Department of Labor through the Mine Safety and Health Administration (MSHA) to control exposure to respirable coal mine dust, the number of Black Lung cases currently being diagnosed in Appalachia is unprecedented according to some researchers. In the decades since the passage of the 1977 Mine Act, MSHA has tried everything from new and more stringent regulations, including Lowering Miners' Exposure to Respirable Coal Mine Dust, final rule, the use of Continuous Personal Dust Monitors and compliance assistance initiatives to eliminate the conditions that lead to the disease. While it appeared that incidence rate had declined in the 1990's, recent data collected by National Public Radio (NPR) after a report was released by the National

Institute for Occupational Safety and Health (NIOSH) demonstrate a huge increase in Black Lung rates, even among younger, less experienced miners.

NPR obtained data from Black
Lung Clinics in Pennsylvania, West
Virginia, Virginia and Ohio that
shows 11 clinics reporting 962 cases
since 2010. This is nearly 10 times
the number of cases reported by
NIOSH during the past five years.
NPR also stressed that the frequency
rate could be even higher because
some of the 11 clinics had incomplete records and eight other clinics
refused to provide any information.

"This new information regarding the drastic increases in the occurrence of Black Lung Disease among miners, especially younger miners with less than 20 years underground, is alarming," said President Roberts.

"It certainly tells you there is something wrong, at least in certain segments of the industry, to allow this to occur. I applaud NPR for uncovering this information. Now we must use it to determine why this is happening and what we need to do to correct it."

As for NIOSH, they acknowledge in their report that they have missed hundreds of cases of the disease. They note the x-ray program is voluntary and only applies to working miners. They cannot compel anyone to participate in the program nor can it test laid-off or retired miners. The situation is further complicated when you consider that miners often avoid testing because of fear of retribution or job loss by their employer. Since 2011 only 17 percent of Kentucky's active mining workforce has been tested.

"This new data is extremely disappointing, but not completely surprising," said Secretary-Treasurer Scaramozzino. "The Union has been making the case for years that larger and more powerful equipment coupled with ever increasing work shifts would have a detrimental impact on miners' health. The Union is also not buying the explanation by some in the industry that these reports reflect historical exposures. Many of these miners have been in the industry less than 20 years—these are today's exposure and incident rates. We do commend the efforts by MSHA to take positive action to eliminate this disease, but if miners want to really reduce their exposure to respirable coal mine dust they need to join the Union. No one else is going to provide them the protections they deserve on the job—no one."

UNITED MINE WORKERS

MARCH-APRIL 2017

128TH YEAR, NO. 2

EADING by EXAMPLE

Lobbying Congress to Keep the Promise

is welcome news to many people, including the families and friends of the 29 miners who perished in the Upper Big Branch Disaster," said Secretary-Treasurer Scaramozzino. "We are acutely aware that the facility where he is incarcerated is more of a country club than a prison and that his punishment does not nearly fit the magnitude of his crimes. At the same time we are forced to accept the fact that sometimes justice is dictated by the status of the individual and not necessarily a just penalty for their offense. That unfortunate fact is obvious in this case."

The Union must point out that the loss of the 29 miners at Upper Big Branch was a horrific event that was the result of willful disregard by the mine operator. It is just as important to note that it was the tragic culmination of the reign of Don Blankenship during which 52 miners lost their lives at Massey Energy mining operations. The sentence handed down by the District Court means Blankenship will only serve a single week in jail for every miner killed while he was CEO of Massey Energy. The punishment may not fit the crime, but at the very least he is no longer operating any coal mines.



The Taft Correctional Institution, where Don Blankenship is incarcerated, is listed as one of the 50 most comfortable prisons in the world.

U.S. Department of Labor's new Black Lung Medical Payments Proposed Rule

Does it Reduce Costs or Eliminate Benefits?

he Office of Workers' Compensation Programs (Agency) in the U.S. Department of Labor issued a notice of Proposed Rulemaking and request for comments on January 4, 2017. The proposal deals specifically with the Black Lung Benefits Act (BLBA): Medical Benefit Payments from the Black Lung Trust Fund to every category of medical provider including hospitals, doctors and clinics.

The background information provided by the Agency notes several times that the payments to providers for Black Lung related services will be reduced. The Agency also stresses on numerous occasions that payment reductions will be advantageous because the... "Trust Fund is more likely to be fully reimbursed for the payments it makes on an interim basis." They also anticipate cost savings based on reduced payments from the Trust Fund for miners eligible to receive medical treatment when the operator responsible for their Black Lung treatments cannot or will not make the required payments.

"The United Mine Workers has carefully reviewed the Rule proposed by the Office of Workers Compensation Programs and is deeply concerned that in an effort to unilaterally reduce costs, they have lost sight of what is important—the health and well-being of the miners and their families," stated President Roberts. "It is unclear when you examine the proposal if the Agency is looking out for the best interest of disabled miners or trying to save money for mine operators who are ultimately responsible for paying the medical bills of these individuals. This is a bad proposal, and the Union will do whatever it can to see that it doesn't take effect."

The Proposed Cuts would be Devastating

While the Agency claims the average cuts to the program amount to approximately 7 percent of total benefits paid, the decreases for some states are drastic. In Kentucky, for instance, inpatient hospital costs in 2014 were paid at 36 percent of total billing. Under the Proposed Rule those payments would be reduced to 26.5 percent of billing, a cut in benefit payments of almost \$1.3 million per year. In Florida, where many UMWA Members reside, the cuts would be even more severe, from 64 percent of total billing to less than 18 percent. The most glaring example of these draconian cuts are the payments made for outpatient hospital services, cuts that would affect every state in the program. The Agency is proposing reimbursement for these services at just 20 percent of current payments; a reduction of 72 percent.

"The Union is convinced that the Proposed Rule, as it is written, would damage the Black Lung Program so severely that it would eventually become even more ineffective, leaving miners disabled from the Disease without adequate medical care," said International Secretary-Treasurer Scaramozzino. "The Agency discusses how the cuts they are proposing will have little impact on the health care industry as a whole, but they seem to ignore the fact that small communities, where these services are offered, are not reflective of large metropolitan areas in the Country. The proposal appears to be aimed at reducing payment schedules to the point it forces providers to stop offering services that miners are entitled to under the BLBA. The UMWA Department of Occupational Health and Safety has already submitted comments opposing the Agency's Proposed Rule. It will continue doing whatever is necessary to ensure miners receive the benefits the BLBA is required to pay."

UNITED MINE WORKERS MARCH/APRIL 2018

NGS

estoNGS

MARCH/APRIL 2018 129TH YEAR, NO. 2

RALLYING TO SAVE NGS

NGS

RALLYING TO PROTECT OUR FAMILIES

PAGE

Joint Select Committee on Multiemployer Pension Plans Created MEMBERS OF THE COMMITTEE AND HOW IT WORKS

NGS

BLACK LUNG SURGES;

A Tragedy – But Not a Surprise

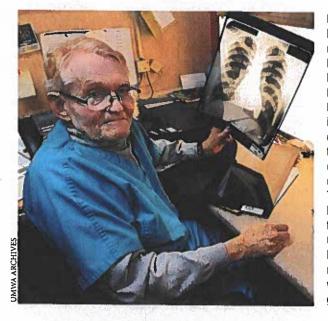
Century, until the passage of the 1969 Coal Act in the wake of the Farmington #9 Disaster, over 100,000 miners died in the United States from Black Lung Disease. In 1978, the federal Mine Safety and Health Act set limits on miner's exposure to respirable dust, and the incidents of Black Lung slowly decreased across the industry. By the mid-1990's, many in the industry were touting the eradication of the disease all together.

In 2016, that notion was shattered when National Public Radio (NPR) announced it had uncovered an alarming increase in the worst kind of Black Lung cases known as Progressive Massive Fibrosis (PMF) or complicated Black Lung in Pennsylvania, West Virginia, Virginia and Ohio. The report showed that from 2010, until its release in December of 2016, eleven Black Lung clinics in these four states identified 962 cases of the disease. NIOSH reported a small clinic in Kentucky had diagnosed 60 cases of PMF in a twentymonth period.

As Black Lung Rates Increase, Government tries to Back Away

"This is an extremely disturbing situation," said Secretary-Treasurer Allen. "In December of 2016, we hear that NPR is breaking a story about a huge increase in Black Lung cases among younger, less experienced miners. Then, just a month later, in January of 2017, the U.S Department

of Labor issued a notice of Proposed Rulemaking for the sole purpose of reducing medical benefit payments from the Black Lung Trust Fund. Now we are learning that the incidence of the disease is far worse than first reported and is considered by some experts to be an epidemic. This



This is a Compliance Problem

"The resurgence of this horrible disease is the result of many factors that are impacting the coal industry today," stated President Roberts. "Many experts and industry officials have cited a litany of reasons for the increase, but in the end, none of those things matter. The fact is, Black Lung is a preventable occupational illness. With the knowledge we have about how this disease is contracted

Dr. Donald Rasmussen looks over x-rays of miners diagnosed with Progressive Massive Fibrosis or complicated Black Lung Disease, Dr. Rasmussen was a pioneer in Black Lung research his entire career. He worked tirelessly on behalf of coal miners who had contracted the disease. The recent revelations by National Public Radio and the National Institute for Occupational Safety and Health of the epidemic resurgence of the disease would have troubled him greatly.

is absolutely unacceptable. We must determine the reason for the spike in Black Lung cases and take action to address the problem. At the same time, we need to ensure miners who have contracted the disease receive the medical treatment they deserve."

The latest report issued by NIOSH in February of 2018, confirms 416 cases of PMF in three clinics in central Appalachia from 2013 to 2017. According to news reports, NIOSH epidemiologist Scott Laney noted, "This is the largest cluster of progressive massive fibrosis ever reported in scientific literature."

and the technology currently available to mitigate respirable coal mine dust, there is no reason for a miner to contract Black Lung. This is not a dust problem, it is an enforcement and compliance problem. It is about mine operators putting production above miners' health and safety while state and federal agencies worry more about compliance assistance programs than they do about enforcing the law. Steps must be taken immediately to correct this situation."

Stone Mountain Health Services, which operates clinics and services miners primarily from Virginia,

Black Lung Surges continued

Kentucky and West Virginia, generally diagnoses five to seven cases of PMF annually. In recent years, that number has skyrocketed. Since NIOSH concluded its fieldwork just over a year ago, Stone Mountain Clinics have diagnosed 154 new cases of PMF.

"It is absolutely outrageous to be in this situation in 2018," said President Roberts. "We know how to prevent this disease, but given these numbers, it is clear preventative measures are being ignored. We also know that once a miner contracts Black Lung, there is no cure. They will be subjected to the slow and painful death by suffocation that is the end result of this insidious disease. Miners and their families deserve better, and the UMWA will do all it can to see this problem is properly addressed."

Fatal Coal Mining Accidents Nearly Doubled in 2017

The number of coal miners who lost their lives in 2017 reached 15, nearly doubling the 2016 total of eight. That figure also eclipses the number of miners killed in the industry in 2015, when 12 coal miners died on the job. These numbers represent a potentially alarming trend in the industry that has seen a steady decline in mining deaths since 2010, when 48 miners were killed in coal mining accidents.

"Current trending patterns with regard to mine accidents and fatalities are almost always an indication of what is to come," said Secretary-Treasurer Allen. "The Union is acutely aware of the fact that historical data shows that, without strong enforcement of the Nation's mining laws, accidents and fatalities will increase over time. The end result is, more coal miners will die on the job in single-incident accidents until ultimately a catastrophic event occurs, claiming multiple lives. That is not a guess or an assumption. These correlations are borne out by historical data. The nearly 100 percent increase in mining fatalities from 2016 to 2017 is not an anomaly, it is a warning."

The federal Mine Safety and Health Administration (MSHA or the Agency) charged with enforcing federal mine laws and investigating coal mining accidents and fatalities, operated for most of 2017 without a replacement for Assistant Secretary of Labor for Mine Safety and Health Joe Main, who left in January. The Administration did not nominate the current MSHA Chief David Zatezalo, the former CEO of Rhino Resources, until September 5, 2017. Zatezalo was not confirmed by the U.S. Senate until November 15, 2017, almost 10 months after Main's departure from the Agency.

MSHA Tries to make Compliance Assistance the Norm

It was during this time, and in the months since Zatezalo took control of the Agency, that MSHA ramped up its Compliance Assistance Program (CAP). The CAP is an extremely controversial and non-enforcement initiative implemented by the Agency. The Union has opposed the Program which forces MSHA inspectors to act as observers during coal mine inspections by stripping them of all enforcement power.

"The policies and distractions that have been hampering the Agency's primary mission of protecting the health and safety of the Nation's miners during the first 10 months of 2017 do not appear to have changed since Mr. Zatezalo arrived at MSHA," stated President Roberts. "The CAP initiative is simply a "get along" program that permits mine operators the opportunity to violate federal law and place the lives of miners at risk, while federal inspectors stand by, powerless to stop them. The Union is convinced this program is a clear violation of federal statute. The Agency does not have the authority to disregard the laws passed by Congress by eliminating a federal inspector's ability to enforce that law. The Mine Act requires every inspector to cite all violations found by a Representative of the Secretary. The Union intends to pursue a remedy to this illegal and arbitrary program."

Government Review to Roll Back Regulations is NOT Tolerable

"Furthermore, during the Agency's current review process, any attempts to roll back a single health and safety law by the leaders of MSHA, they better understand the depth of the fight they are asking for," President Roberts continued. "Every law they are reviewing was the result of a miner or many miners losing their lives to this industry. The UMWA will not stand by and allow these protections to be eroded or stripped away.

JULY-AUGUST 2018 WORKERS 129TH YEAR, No. 4

LABORHASSPOKEN

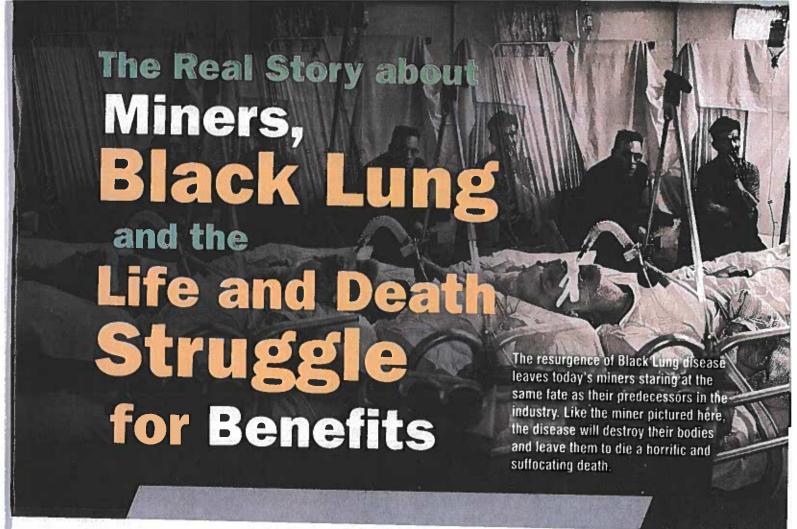
CONGRESS-Fix the Pension Crisis



PAGE

11

Real Story About Black Lung



EARL DOTTER

ecent studies show that the occurrence of Pneumoconiosis, or Black Lung disease, among coal miners across the Nation has skyrocketed beyond anything ever seen before in the industry.

TROFICE OF TO

Younger, less experienced miners are contracting the disease at an earlier age, subjecting them to a shortened and debilitating existence until they ultimately succumb to the ravages of the illness.

"This is an industry that, left to its own devices, has no regard for the health and safety of the men and women who mine the coal and made them their fortunes. They regard these individuals as just another cog in the machine," said President Roberts. "In the early part of the 20th century, mine operators made it clear that they had more concern for the mules they bought than the miners they hired. Today, they worry about burying a mining machine in a rockfall or losing production on the longwall. But the life and health of the miner is not a priority.

Mining has changed greatly over the past century, unfortunately, the attitude of mine operators has not. There is only one way to fix these terrible circumstances. If miners want protection, if they need to be sure their life is valued, if they want to live their retirement years with some sense of dignity, they need to join the Union."

As Miners are Contracting Black Lung at Historic Rates Mine Operators and the Government Act Surprised

Data from Black Lung Clinics across Appalachia, reported by National Public Radio (NPR) and studies by the National Institute for Occupational Safety and Health (NIOSH) have all come to the same conclusion. The occurrence of Pneumoconiosis and Complicated Massive Pulmonary Fibrosis is being diagnosed in unprecedented numbers across the region. Perhaps even more alarming, is that many of the individuals contracting the disease are younger miners with less than 20 years of mining experience.

The information obtained from eleven Black Lung Clinics in Pennsylvania, West Virginia, Virginia and Ohio discovered 962 cases of the

disease from 2010 to 2015. This is nearly ten times the number of cases reported by NIOSH during those five years. NPR also stressed that the frequency rate could be even higher because some clinics had incomplete records and other clinics refused to provide information.

"The government can claim they are doing all they can to reduce miners' exposure to coal mine dust and operators can argue the industry isn't at fault, but there is clearly a problem here," stated President Roberts. "There is only one way miners get Black Lung disease. They are breathing air that contains excessive amounts of respirable coal dust. Having stated the obvious, it becomes clear that the law is not being properly enforced or mine operators are not following mandatory health and safety standards or both. There is no other explanation. When enforcement does not exist and operators are permitted to police themselves, miners die. This is not hype and it is not overreaction, I am simply stating the facts. Now, we need to stop talking about how we got here or why we are here and find the solution. Miners are dying."

Ignoring History does have Consequences

The history of Black Lung disease, like many industrial illnesses workers have faced throughout their careers, is rooted in the mischaracterization, denials and lies of the powerful corporate barons who own and operate the mines, mills and factories.

For victims of Pneumoconiosis, the story started with the denials that the disease even existed. For over one hundred years, as miners died from their exposure to coal mine dust, the operator refused to acknowledge the problem. When it became apparent to the public that miners were suffering from abnormally high numbers of chronic lung conditions, mine operators attempted to extoll the vir-

The National Institute for Occupational Safety and Health (NIOSH) has been on the cutting edge of Black Lung research and diagnostics. The NIOSH x-ray van travels the Country offering free x-rays to coal miners.

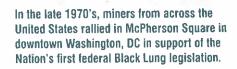


tues of the symptoms, claiming that the choking and coughing would actually clear the miners' lungs and keep them healthy. Company doctors, hired and paid for by the operators, even claimed it was healthy for miners to breath coal dust. Finally, when there was no recourse but to accept the medical reality that miners were dying because of the dusty environment they were forced to work in, mine operators laid the blame at the feet of the miners.

In the eyes of the coal barons, the miners who are slowly suffocating from this insidious disease are lying about their condition to collect benefits they do not deserve. In a shameful twist, the coal operators have put all their energy into playing the victim. They have spent almost 200 years blaming everyone else for the conditions that miners suffer. The resurgence of the disease in recent years has not changed the operators or their trade associations' misinformation campaign.

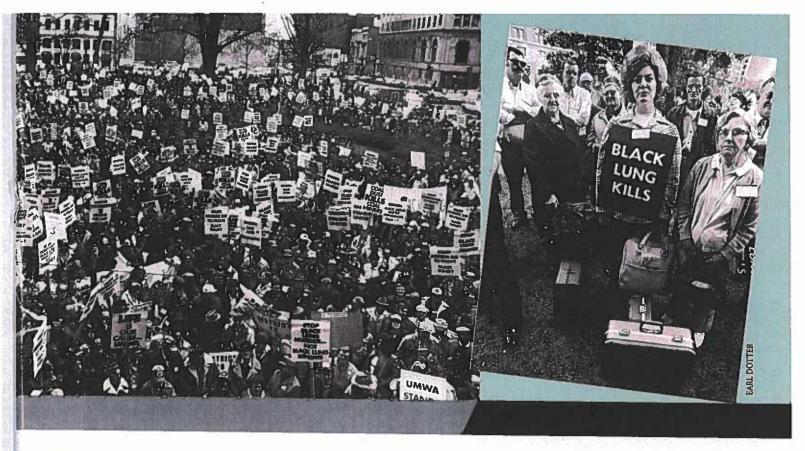
From Mine Operators to the NMA, it's the Miners Fault or Miners are Liars

The most recent tact by mine operators and the National Mining



Association (NMA) ring ominously familiar to the past. The latest iteration of the miners' lung problems is a rare and debilitating disease known as Idiopathic Pulmonary Fibrosis (IPF). Despite the fact that the cause of IPF is unknown and that it effects people over the age of 55 almost exclusively, it is the latest attempt by the industry to distance itself from exposing miners to excessive coal dust. The fact that almost every one of the estimated 42,000 individuals who will be diagnosed with IPF this year will be over the age of 65 and have no connection to coal mining does not stop the industry propaganda machine.

The industry also relies on the decades-old idea that smoking is the culprit. But according to Dr. David Blackley, head of Respiratory Disease Studies at the National Institute for Occupational Safety and Health, [Black Lung] is "...an incurable disease caused by inhalation of coal



dust...it is not caused by smoking" and "...is easy to distinguish with x-rays." However, industry apologists still use the old familiar tactics despite medical evidence to the contrary. Bruce Watzman, head of Regulatory Affairs for the NMA, reiterated the tired old lie about the disease. He noted that based on, "... discussions with those who administer this program for [coal] companies...more often than not, we are called to provide compensation for previous or current smokers."

"Miners have been mining coal to power this Country for more than 200 years, which is just as long as mine operators have been lying about Black Lung disease," said Secretary-Treasurer Allen. "No matter what the circumstance; inadequate ventilation, excessive dust, a mine explosion or in this case miners suffering from Black Lung disease, mine operators never accept any responsibility for their actions. The excuses never seem to end. More than 100,000 miners have been killed in this industry and over 100,000 more have suffocated to death from

Pneumoconiosis, but I have never met a coal operator who has offered anything but excuses and used tainted evidence by company paid physicians to place blame elsewhere. The stories never change; a miner dies in an accident or succumbs to black lung, the coal operator blames the miner or claims it was an act of God and forgets the miner ever lived, let alone worked for the company. It's a sad situation that just keeps playing over and over."

After a Miner Contracts the Disease, the Lying and Dishonesty Really Begins

There are countless stories of miners who have contracted the most severe form of Black Lung disease, Massive Pulmonary Fibrosis (MPF). These miners are examined by medical experts from the U.S. Department of Labor and their own doctor to confirm their worst fears only to be denied benefits by their employer. The truth is, almost without exception, and despite overwhelming evidence to the contrary, coal operators still refuse to recognize the miners' dis-

Widows joined the fight to wipe out Black
Lung disease at a rally in Charleston, West
Virginia in the late 1960's. The State passed
the first Black Lung legislation in the Nation.
After decades of decline, the resurgence of the
disease in the early 21" century has affected
more miners than previously recorded in the
history of the mining industry.

ability and drag them through years of court proceedings. The premise behind the operator's decision to deny benefits is simple. The delaying effort allows them to rely on time and money, two things most miners with the disease don't have.

The expense of pursuing the claim can cost the miner tens of thousands of dollars they simply do not have and most lawyers familiar with the Black Lung legal system know the return on their investment in time and research is meager at best. So, after an initial filing and a series of hearings before the administrative law judge, most miners cannot afford to continue the fight. The case is dropped, the company wins and the miner suffers in obscurity until the disease causes their lungs to fill with liquid and they drown.

Should a miner have enough resources to continue the benefit fight, the employer's legal team relies on the passage of time to settle the case. Miners with MPF have a limited time left on this earth. Through court hearings, delays, appeals and any number of stalling tactics, the miners' time is slowly drained away as the case languishes in the system. Ultimately, the miner will suffocate and die. But, for the mine operator and his legal team, the case is over and no benefits are paid. It's a win no matter what the cost in human tragedy!

Unfortunately, the truth about these despicable tactics by mine operators and the law firms they hire with the profits from the miners' labor is that, they work.

A Special Place in Hell

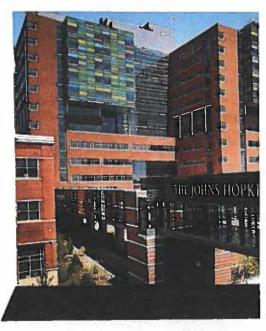
The intervention and deceitful dealings of the lawyers, and in
many instances the less than truthful
medical personnel they hire to do
the companies' bidding, must also
be taken into account. While miners,
their lawyers and the UMWA have always suspected that an unethical and
unholy alliance came together and
would resort to whatever means necessary to defeat the miners claim for
benefits, the fact is, there is evidence
to support the claim.

The case in point deals with one of the largest legal firms representing coal companies, Jackson Kelly, PLLC and one of the most prestigious medical institutions in the Nation, Johns Hopkins University Medical Center. The two institutions know each other well, they have worked together on Black Lung cases for decades. Their collaboration and interaction with coal operators around the Country have been extremely damaging to miners seeking compensation for the illness that is ravaging their bodies and destroying their lives.

Jackson Kelly, PLLC

For Jackson Kelly, their nearly two centuries of catering to the coal industry has made them the go-to law firm for the giants in the business. The firm's aggressive and ruthless approach to defending their coal industry clients is apparent, but a report by the Center for Public Integrity (the Center) raises serious ethical questions about the firm's tactics. In a very limited review of cases handled by Jackson Kelly, the Center found at least eleven cases that the firm was "...found to have withheld potentially relevant evidence of Black Lung and, in six cases, the firm offered to pay the claim rather than turn over documents as ordered by a judge." In one case in particular, a miner underwent a biopsy to determine if he was suffering from lung cancer. The tissue was examined by a pathologist and was ruled negative for the disease. However, without the knowledge of the miner, Jackson Kelly obtained the medical slides of the biopsy and sent it to two pathologists the firm commonly contracted with. Both reported that the tissue from the biopsy was likely complicated Black Lung disease. The report, which only Jackson Kelly had, was suppressed, hidden away and never shared with the miner, his doctor or his attorney at trial. The miner's benefits were denied.

The report also discovered that, according to Jackson Kelly's own documents, the firm has a history of withholding evidence that is unfavorable to its clients and "...shaped the opinions of its reviewing doctors by providing only what they wanted them to see." The firm claims that they are not required to disclose such information because it is "attorney work product." Meanwhile, as miners continue to suffer and die from the incurable effects of the disease, Jackson Kelly continues to defend the practice. In court filings, Counsel for the firm noted, "...there



Johns Hopkins Medical Center ran a Black Lung program for more than four decades. Prior to shutting the program down its director, Dr. Paul Wheeler, examined 1,500 x-rays of miners' lungs. He never once diagnosed a case of complicated Black Lung disease.

is nothing wrong with its approach and that its proper role is to submit evidence most favorable to its clients." In the end, truth be damned, miners are collateral damage in the industry and Jackson Kelly must win no matter what the cost.

Johns Hopkins

A small unit of radiologists in one of the Nation's most prestigious medical schools has been doing the bidding of coal companies in their attempts to deny miners' Black Lung claims for decades. For 40 years, these medical professionals at Johns Hopkins Medical Center have reviewed x-rays of miners suffering from Black Lung disease. Almost without exception, these individuals, whose x-ray interpretations cost up to 10 times the rate typically paid for such services, have never diagnosed the most severe form of the disease. Massive Pulmonary Fibrosis.

To get the full picture of the impact that Johns Hopkin's Black Lung program has had on miners across the country, you need only look at the work of one man who ran the operation for the hospital, Dr. Paul



Wheeler, Wheeler, who retired after the story by the Center was printed and the hospital terminated its Black Lung program, was considered by many to be a leading authority on lung disease. With a medical degree from Harvard University and the prestige associated with Hopkin's Medical Center, judges took his evaluations of patients as gospel. Some sided with the coal company's medical professional because he [Wheeler] is, "...the best qualified radiologist" and stating their decisions were because of Wheeler's testimony noting, "I defer to Dr. Wheeler's interpretation because of his superior credentials."

But, a deeper look into Wheeler's expertise revealed some alarming problems. The Center's reporting found that, "In more than 1,500 cases decided since 2000 in which Wheeler read at least one x-ray, he never found the severe form of the disease, complicated coal workers' Pneumoconiosis." However, in more than 100 of the cases Wheeler determined to be negative, biopsies and autopsies provided indisputable evidence of Black Lung.

The doctor may have many reasons for his findings, beyond the fact that coal companies are the client. His own words seem to indicate as much. For whatever reason, he

believes miners don't have Black Lung and are being wrongfully compensated. He stated, "They're getting payment for a disease that they're claiming is some other disease." Wheeler generally blamed miners' lung problems on tuberculosis or histoplasmosis (an illness caused by a fungus in bat and bird droppings). His arrogance, however, does not end there. He has made it clear that despite what the law says, miners should be required to prove the existence of Black Lung. When confronted with his misinterpretation of the law, Wheeler's contempt reached a new level when he stated, "I don't care about the law."

The story by the Center was an enlightening look into the less than

honorable and sometimes unethical levels coal operators and their surrogates will go to in order to win. Miners stand little chance of proving their case when the odds are so heavily stacked in favor of big business and bigger money. The tragedy lives on until the miner finally dies, but the "professionals" who oppose them go home to comfort and with another notch in their belt.

Troubles with the Black Lung Trust Fund Continue

In the end, miners or their spouses who are fortunate enough to navigate through the system and receive the benefits they are owed are now facing another hurtle. Many whose employers are no longer in busi-

"For some people who are rich, their toughest job in life is probating their parents' will and demanding another tax cut from the government. For those who are not, it is a life of hard work and struggle," said President Roberts. "The United Mine Workers of America was not created through the benevolence of the rich and powerful. We are the sons and daughters of fighters. We have taken from the tyrants of industry and the wealthy what is rightfully ours, and we fully intend to keep all of it. Some people will do anything for money, but there is a special place reserved for them. They may have many lawyers and doctors willing to do whatever it takes to cheat the injured and sick out of what is rightfully theirs, but we will not stand by and let it happen. It is time to get off the couch and hit the streets. We are going to win this Black Lung fight like we have won all the others by marching and agitating and fighting."



Despite an all-out effort by the federal Mine Safety and Health Administration beginning in 2009 to educate miners about the hazards of respirable coal mine dust, the occurrence of Black Lung disease among miners of all ages, including younger, less experienced miners is reaching epidemic proportions. This sticker ended up being a reminder of how little control non-Union miners have over their working conditions.

ness or whose employer refuses to pay are placed in the Black Lung Disability Trust Fund (Trust Fund). The Trust Fund, which was created in 1978, is funded by a tax on coal produced and sold domestically. Currently this coal severance tax amounts to \$1.10 per ton for underground coal and \$.55 per ton for surface coal. Revenues generated by the tax have rarely been sufficient to fully finance the Trust Fund, and as of 2017 it was running a multi-billion-dollar deficit. That situation will only become worse in January of 2019 when a scheduled 55 percent reduction in the coal tax is scheduled to kick in.

The bottom line is that permitting the revenues to decrease threatens the overall stability of the Trust Fund. Miners and their families who receive payments between \$650.00 and \$1,300 a month, depending on the number of dependents in the family, could not only see these minimal payments dry up, but the medical assistance they need to survive would also be eliminated. While many of our friends in Congress, including Bobby Scott (D-VA), Richard Neal (D-MA) and Sander Levin (D-MI) are seeking ways to correct the problem, coal industry lobbyists are pushing just as hard to reduce their liability and give a tax break to the coal operators.

The situation for these families is untenable. Staring at a challenging and limited future from a health standpoint, they must now face the uncertainty posed by the potential loss of benefits. The stress and worry only adds to an already unbearable situation.



There is only one solution – Fight

"The legacy of the mining industry is one of tragedy and despair. For more than a hundred years miners and their families were treated with distain and contempt by coal operators and the government," stated President Roberts. "It wasn't until the Union was firmly established that miners' lives were transformed from slaves to the coal barons to middleclass members of society. Company houses and company stores were eliminated. The company doctors and preachers were finally run out of town and miners were free to enjoy the full benefits of citizenship. The Union ushered in higher wages, medical benefits, retirement security and programs that compensated those who suffered injury and illness because of the labor they performed. Miners have proven their loyalty and patriotism to their Country in many

different forms. They have worked for every penny and benefit they receive. We are not about to let anyone take away what these men and women have earned. The UMWA was born out of struggle, fighting to protect the American working class. There is no retreat on these issues. The struggle is before us, and we will meet the challenges just as our forebearers did. There is only one way to keep what is ours — FIGHT. That is exactly what we will do to protect these families."

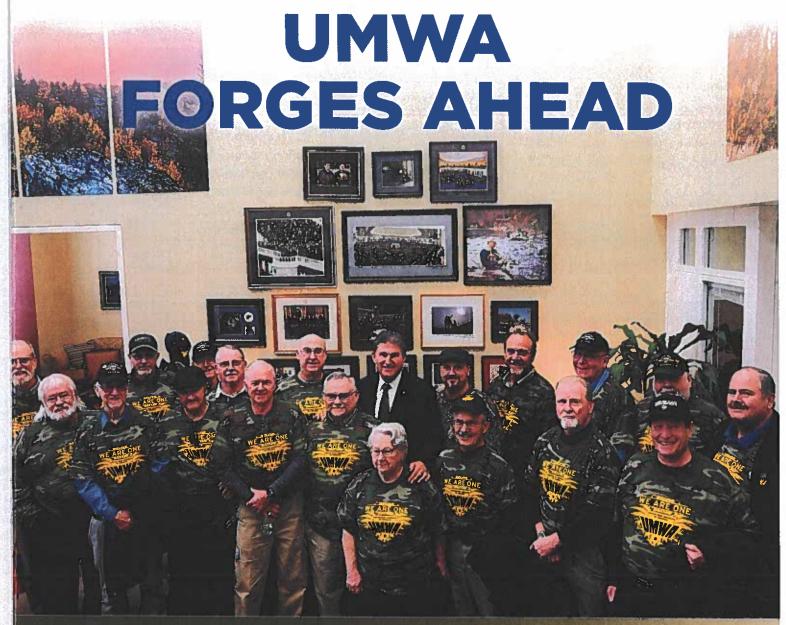
On June 6, 2018, President
Roberts spoke at the National Black
Lung Conference in Pipestem, West
Virginia. His message was loud, clear
and without hesitation. "The UMWA,
along with the Black Lung Association and Clinics refuse to allow the
surge of Black Lung disease to continue. The pain, suffering and inevitable
death of miners with this disease
must stop. In the words of Mother
Jones, we must pray for the dead and
fight like hell for the living."

JULIED MINE WORKERS JULIER WORKERS J

JANUARY-FEBRUARY 2019

130TH YEAR NO 1

Joint Select Committee Fails Pensioners



PAGE

Interview with President Roberts

Black Lung Cases Skyrocket

A miner is tested for the presence of Pneumoconiosis at a Clinic in West Virginia. The occurrence of this disease is greater today than it was when the Coal Act was passed in 1969.

ccording to a report published in the September 2018, edition of the American Journal of Public Health, the National Institute for Occupational Safety and Health (NIOSH or Agency), one in every ten coal miners who have worked for at least 25 years in the industry has been identified as suffering from Pneumoconiosis or Black Lung disease. The situation in West Virginia, Kentucky and Virginia is much worse. NIOSH data has determined that one in five miners with two and a half decades mining experience in central Appalachia have contracted some level of the disease. The Agency also noted that the number of miners diagnosed with progressive massive fibrosis (PMF), the most severe form of the disease, will likely increase at the same rate in the coming years.

"The situation facing miners diagnosed with Black Lung disease has always been bleak," stated President Roberts. "The fact is, there is no cure for Black Lung, so a miner diagnosed with the disease will see their health continue to slowly deteriorate until they can no longer walk across a room or lay flat in their bed. Eventually, they will die a cruel and hideous death by suffocation. It is becoming more and more apparent that despite all the progress we thought was made to control dust levels in the

mines since the Coal Act was passed in 1969, the disease has not been eradicated. In fact, these studies show the disease is worse than ever before. Without aggressive and impartial enforcement, the scourge of Black Lung is destined to continue."

Roberts continued, "It is not a coincidence that the vast majority of these new cases of the disease have been diagnosed in miners working at non-Union operations across the country. The United Mine Workers of America has been fighting for the health and safety of mine workers for more than 129 years and we are certain our presence at these operations would dramatically reduce the occurrence of the disease. It is clear that with the number of new cases of Black Lung being diagnosed reaching historic levels, action must be taken to determine the root causes of this epidemic and correct this public health crisis. The UMWA is ready to fill that void and help reverse this horrific trend."

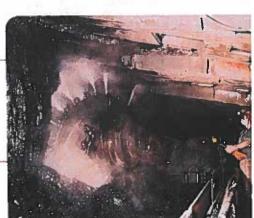
Today, Black Lung rates in the United States are higher than the ones that forced Congress to pass the Coal Mine Safety and Health Act of

The implementation of larger more powerful mining equipment, which pulverizes coal and rock into a fine dust, is at least partially to blame for the increase in Black Lung disease. The disease is especially prevalent among non-Union miners.

1969, that set maximum dust levels permitted in the Nation's mines. To put this health crisis in perspective, the number of cases of Black Lung diagnosed through 2016 in West Virginia and Kentucky have increased over 16 percent compared to 1970. In Virginia, the same year comparison shows an increase of over 31 percent. Doctors from the National Institute for Occupational Safety and Health have described the incidence rates as nothing short of an epidemic.

Black Lung Disability Trust Fund Recipients Face Uncertain Future

December 18, 2018, was a significant day in the lives of coal miners who are already afflicted by Black Lung and current miners who may contract the disease. The date, which many miners may be unaware of, was actually established by Congress in 1981 as the day the excise tax placed on every ton of coal produced in the United States would be reduced by 55 percent. This tax is used by the federal government to provide the revenue necessary to operate the federal Black



The National Institute for Occupational Safety and Health
(NIOSH) travels the Country screening miners for Black
Lung disease. NIOSH has just released a report
stating that 1 in 5 miners in central Appalachia has
some level of Black Lung disease.

Lung Disabil-

ity Trust Fund (Trust or Fund). Congress set this arbitrary deadline in 1985 believing that Black Lung would be eradicated before the coal excise tax expired in 2018.

Prior to the expiration of the Coal Excise Tax, operators paid \$1.10 on coal produced underground and \$.55 on surface coal. According to the Congressional Budget Office (CBO), had the Tax been extended, the Trust Fund's current \$6 billion debt would have been reduced to \$4.5 billion by 2050. An increase of \$.25 per ton of coal would have eliminated the debt altogether. The CBO has determined that allowing the tax to expire, as Congress did in December, will allow the debt to explode and require a multimillion-dollar taxpayer bailout to prop up the Trust Fund.

Surface miners are also affected by the higher incident rates currently being diagnosed among miners in the Nation's coalfields.

"No matter how far we seem to come in this Country, whether it is advances in science, technology, medicine or a host of other subjects, some things never seem to change," said Secretary-Treasurer Allen. "I suppose many industries deny the problems they cause, but the people who own and operate coal mines seem to be the worst. They all argue that they should be allowed to make as much money as possible on their investment without government interference. Then when their actions cause major economic or health

problems, they want the government to force taxpayers to bail them out. That is exactly what happened in the aftermath of the recession of 2008 and that is what coal operators are asking for now. They want to keep their profits private but socialize their losses. It is time for Congress to tell these businesses they are responsible to pay, not the American taxpayer."

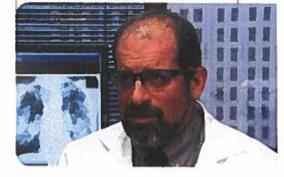
With a Crisis on the Horizon, Kentucky Punishes Workers

On March 30, 2018, Kentucky's Republican Governor signed House Bill-2 which was passed earlier in the year by the Republican controlled Legislature. The bill stops workers' compensation payments, including Black Lung benefits, after 15 years from the time the sick or injured worker begins receiving compensation. But after learning about the alarming increase in the occurrences of Black Lung disease among current and much younger miners, the Legislature used HB-2 to further protect the industry. In response to industry lobbying, they barred radiologists and physicians who are certified B-readers from reading and making determinations on miners' chest x-rays. Breaders are physicians certified by the National Institute for Occupational Safety and Health as demonstrating proficiency in classifying x-rays for pneumoconiosis. As a result of the new law, there are only four doctors in the state certified to read miners' chest x-rays and determine if miners have Black Lung - three of these physicians are coal industry consultants.

"The inaction by the United States Congress and the action by the state of Kentucky are absolutely unbelievable," stated President Roberts. "It is a failure of courage for Congress to refuse to take the action necessary to help sustain the Federal Black Lung Disability Trust Fund by changing a date set over three decades ago. As for the Kentucky Legislature, it is obvious that they have determined who they are beholden to, and it is not the workers or voters of the state. It is impossible to look at these two decisions and not see that some of our elected representatives have clearly chosen sides in this matter. Unfortunately, they have chosen to stand with their wealthy donors and cast sick and injured workers aside. I don't know how they can look at themselves in the mirror or sleep at night. They must be held accountable for the human suffering they are causing. This is unconscionable."

Senator Joe Manchin (D-WV) has introduced Senate Bill 27 that would restore funding to 2018 levels.

Dr. Robert Cohen, Professor of Medicine and Director of Occupational Lung Disease at Northwestern University's Feinberg School of Medicine is not only alarmed by the surge in Black Lung disease, but by the decision by Congress to let funding lapse for disabled miners.



Attachment 30



UNITED MINE WORKERS OF AMERICA

shall be designed to control methane and respirable dust and shall be suitable to the conditions and mining system at the mine. The ventilation plan shall consist of two parts, the plan contents as prescribed in §75.371 and the ventilation map with information prescribed in §75.372."

Massey was cited 47 times for violating §75.370 since January 2009. Ventilation plans are precise documents describing the layout of the mine and what will be necessary to ensure adequate air is supplied to mining sections and all other areas of the mine. The written details of the plan are necessary for the Agency to ensure the mine operator complies with the law. More importantly, they are necessary so miners know that the conditions they are required to work under are maintained in a manner that protects their health and safety.

None of these 47 citations and orders can be considered incidental or minor infractions. The violations all materially affected the health and safety conditions for miners at the operation. Some are simply more egregious than others, but collectively they demonstrate the obvious disregard management had for the law and the lives of its own miners.

Order number 8090855, issued June 17, 2009, states in part, "The operator is failing to comply with page 5 of the approved ventilation plan... The miner man is standing in the visible dust in the return of the continuous miner. The section foreman stated he was aware of the condition.... and failed to take action to correct it" (emphasis added).

Order number 8090856, issued June 17, 2009, states in part, "The operator failed to comply with the approved methane/dust control plan... The miner operator was standing in visible dust... The section foreman stated to MSHA that he was aware of the conditions" (emphasis added).

These orders not only reveal unhealthy and illegal conditions, but also appear to represent routine occurrences at UBB. Visible dust in the mine atmosphere can be the result of several factors, with inadequate ventilation the most likely in this case. Secondly, the foreman was aware of the condition but allowed it to continue. This demonstrates such mining practices were common and tolerated by Massey Energy. Based on the investigation, the Union suggests such practices were part of the normal operating procedures imposed by Massey on the workers.

The fact that miners worked in such a dusty atmosphere offers great insight into the presence of black lung disease detected in many of the miners killed in the disaster. Of the 24 miners between the ages of 25 and 61 whose lungs could be examined during autopsy, 17, or 71 percent, showed some stage of black lung disease.

Massey was aware of conditions in the mine and expected miners to continue to work in those conditions. The refusal of management to deal with the ventilation problems is reflected in many of MSHA's citations. Some of the bigger problems are listed below.

Order number 6612934, issued on September 1, 2009, states in part, "The operator failed to follow an approved ventilation revision....The

Two sets of books

In all instances, information about conditions within the mine must be available to all interested parties at the mine. However, Massey Energy regularly disregarded these requirements by keeping two sets of books.

On June 29, 2011, MSHA released six pages from these books, three from the official record books and three from Massey's production and maintenance books (attached). The entries are dated March 1, 2 and 16, 2010. The official reports do not indicate anything of consequence, no hazards or unusual events. These are the records that Massey made available to the inspectors and others on the property, including the miners themselves.

However, the mine's production and maintenance books tell a much different story. As noted above, the report for March 1, 2010, reads, "Added 5 gal oil to the T/E ranging arm. Had no water on either drum, cleaned several and stopped right back up, removed 8 on each end, ran like that rest of shift to try and flush drums, told 3rd shift."

Running the shearer with no water sprays, as would be the case here, is a serious violation. Obviously, this would be a violation of the ventilation plan and because it was done knowingly, this action demonstrates a reckless disregard for the law. More importantly, the action places the miners on the section at immediate risk for an ignition of gas or dust accumulating on the coal face. And over the long term, exposure to uncontrolled coal mine dust greatly increases miners' chances of contracting black lung disease.

The production maintenance book for March 2 states, "25 min Reventelating [sic] to get methane out of #3 1.5 Reduced to .30."

The production maintenance book for March 16 notes, "Low Air in LOB outby going to HG22 Tail open 7:00-8:10....

Adverse Roof condition their coal streak four ?5' up. Falling out to in # 1 2."

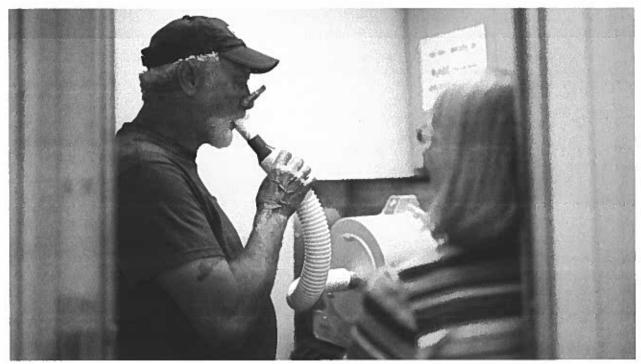
Since these incidents were not recorded in the official record book, there was no way for the oncoming shift to know that these hazards existed. Miners entering the mine would be absolutely unaware of potentially dangerous conditions present when they arrived on the section. Further, when MSHA reviewed the "official" books, it would not get any sense of what conditions were actually like in the mine.

The Mine Act requires operators to examine the entire mine at regular intervals. The scope and timing of the examination is determined by the particular examination being performed. Required examinations are listed in 30 CFR Subpart D – Ventilation, previously referred to in this report.

The results of these examinations are required to be recorded in an official record book designated for that purpose, signed or initialed by the person making the examination and countersigned by the mine foreman or equivalent company official. The report must contain a record of hazardous conditions and their locations found by the examiner during each examination and of the results and locations of air and methane measurements.

Attachment 31

As Mine Protections Fail, Black Lung Cases Surge



Coal miners are tested for black lung at a clinic in West Virginia. David Deal for NPR

Part one of a two-part series.

It wasn't supposed to happen to coal miners in Mark McCowan's generation. It wasn't supposed to strike so early and so hard. At age 47 and just seven years after his first diagnosis, McCowan shouldn't have a chest X-ray that looks this bad.



BLACK LUNG RETURNS TO COAL COUNTRY

What Is Black Lung?

"I'm seeing more definition in the mass," McCowan says, pausing for deep breaths as he holds the X-ray film up to the light of his living room window in Pounding Mill, Va.

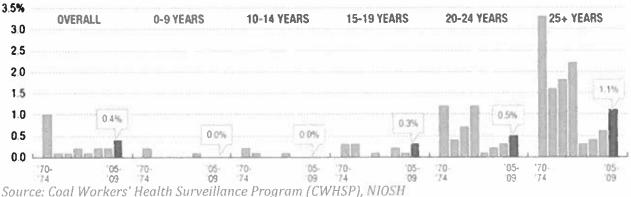
"The mass is larger and more defined in the right upper lobe," he continues, clinically describing the solid streak that shows up white on the X-ray of his lungs. "If you know white is bad and black is good, I'm in a lot of trouble."

McCowan went from a clean X-ray at age 35 to progressive massive fibrosis — an advanced stage of coal workers' pneumoconiosis, or black lung — in just five years.

"You go from being normal to where ... one day you try to do something you used to do, and you can't do it and you're just heaving to catch your breath," McCowan says. "And you say this is crazy. It can't be this bad. And then you realize a couple months down the road that it can be. And you realize a year down the road after that that you ain't seen nothing yet."

An 'Epidemic' Among Miners

The Resurgence Of Black Lung By Tenure Percent of evaluated mine workers with the most severe stage of black lung, by years of mining (1970-2009, in 5-year groupings)

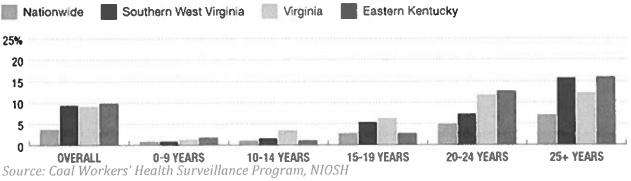


Source: Coal Workers' Health Surveillance Program (CWHSP), NIOSH Credit: Alyson Hurt / NPR

A joint investigation by NPR and the Center for Public Integrity (CPI) has found that McCowan is not alone. Incidence of the disease that steals the breath of coal miners doubled in the last decade, according to data analyzed by epidemiologist Scott Laney at the National Institute for Occupational Safety and Health (NIOSH).

Black Lung District By District

Percent of evaluated mine workers with any stage of black lung, by years of mining (2000-2009)



Credit: Alyson Hurt / NPR

Cases of the worst stage of the disease have quadrupled since the 1980s in a triangular region of Appalachia stretching from eastern Kentucky through southern West Virginia and into southwestern Virginia.

The Appalachia region between eastern Kentucky, southern West Virginia and southwestern Virgina has seen a dramatic return of black lung.



Black lung experts and mine safety advocates have warned of the resurgence of the disease since 1995. New reporting by CPI and NPR reveals the extent to which federal regulators and the mining industry failed to protect coal miners in the intervening years.

An analysis of federal data by CPI and NPR also shows that the mining industry and federal regulators have known for more than two decades that coal miners were breathing excessive amounts of the coal mine dust that causes black lung. CPI and NPR also found that the system for controlling coal mine dust is plagued by weak regulations and inaccurate reporting that sometimes includes fraud.

"This is clearly a public health epidemic," Laney says. "This is a rare disease that should not be occurring. It's occurring at a high proportion of individuals who are being exposed."

Especially shocking to Laney and others focused on black lung is the grip the disease has on younger miners and its rapid evolution to progressive massive fibrosis, or complicated black lung.

At the Upper Kanawha clinic in Cedar Grove, W.Va., the black lung caseload doubled in the last 10 years, according to program coordinator Debbie Wills, and began to include younger miners in their 40s and more serious disease.



Patty and Gary Quarles lost their son, Gary Wayne Quarles, in the explosion at Upper Big Branch mine. Their son's post-mortem diagnosis indicated he had black lung, a puzzling finding since he was only 33.

David Deal for NPR

"The first 10 years or so that I worked here I had four patients with complicated black lung," says Wills, who has worked at the clinic since 1989. "We knew them all intimately because there were so few of them. Now we have at least 50 diagnosed with complicated black lung."

The autopsies of the 29 victims of the 2010 explosion at what was then Massey Energy's Upper Big Branch mine also show an escalation of cases. Twenty-four of the victims had sufficient lung tissue for testing, and of those, 71 percent had the nodules and lesions on their lungs that signify the disease.

That's a rate 10 times the average for southern West Virginia, says Davitt McAteer, a former federal mine safety chief who led an independent investigation of the explosion, in Raleigh County, W. Va., and reviewed the autopsies.

"What was shocking was the number of miners who showed evidence of black lung," McAteer says, "particularly among younger miners ... and miners who you would not have expected to have black lung."

That includes some victims who spent fewer than 10 years underground and at least two who were only in their 20s.

"It's unbelievable," says Gary Quarles, whose son Gary Wayne Quarles was 33 when he died at Upper Big Branch. His autopsy showed signs of black lung. "Being in the mines for 13 to 15 years and already considered having black lung ... that's uncalled for."

Quarles, who is 55 and spent twice as many years underground, says his chest X-rays are negative for the disease.

Federal Law Aims To Curb Black Lung

The Federal Coal Mine Health and Safety Act of 1969 was supposed to sharply cut exposure to coal mine dust. The act set a standard for coal dust exposure (2 milligrams per cubic meter of air), which was as little as 1/4 of the concentrations miners breathed at the time.

The act's passage followed a 23-day unauthorized and rowdy strike in which 40,000 West Virginia coal miners demanded government efforts to prevent the disease and to compensate victims.

By the end of the year, tough dust exposure limits were in place. Miners were offered free diagnostic chest X-rays every five years, and federal compensation became available.

The X-rays showed 4 in 10 miners tested had black lung. The disease killed 1,800 miners in a single year. But diagnoses soon plunged more than 90 percent, according to NIOSH data.

"They anticipated that no one would develop progressive massive fibrosis," says 84-year-old Donald Rasmussen, a pulmonologist in Beckley, W.Va., who says he's tested 40,000 coal miners in the last 50 years.

"In 1969, I publicly proclaimed that the disease would go away before we learned all about it," he adds. "And I was dead wrong."

Rasmussen first started charting an increase in serious black lung cases about 15 years ago.

"We began to see the appearance of younger miners who had worked in the mines only since the dust suppression following the '69 act that were showing up with complicated pneumoconiosis or progressive massive fibrosis," he says.

Since 1970, NIOSH epidemiologists documented test results for 43 percent of the nation's coal miners. In 1995, the tests began to indicate more and more black long, rapid disease progression and the unexpected occurrence among relatively young miners.

More On Black Lung

"From the patterns and from the severity, from the prevalence of the disease, this must be a situation in which the dust in many, many mines is simply not adequately controlled," says Edward Petsonk, a pulmonologist at West Virginia University and a consultant for NIOSH. "There's nothing else that could possibly cause this."

Increased Dust Exposure

The new era of coal dust controls was followed by more dust exposure for miners, according to federal data obtained by CPI and NPR. The average workweek for coal miners grew 11 hours in the last 30 years, adding about 600 hours of exposure each year.

"By the time I was 40 years old, I mined more coal than most miners [had] seen in a lifetime," says McCowan.

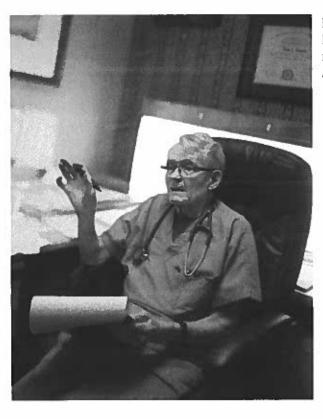
Production pressure grew with greater demand for coal and higher prices. By 2000, coal production had jumped fivefold from the 1970s. In 2010, it was still triple what it was when the new coal dust limits took effect.

"You can't be exposed to the kind of tonnage that I was and not get black lung disease," McCowan says.

Actually, Petsonk and Rasmussen say, some miners are more susceptible to black lung than others. They can't explain why, but they do say that smoking enhances susceptibility. Still, neither McCowan nor Gary Wayne Quarles was a smoker.

Mining machines also became more powerful and efficient, cutting through coal seams laced with silicabearing quartz and sandstone, especially in Virginia, West Virginia and Kentucky.

"In the process, they release more silicon dioxide, and the increase in silica is more toxic than just the coal dust itself," Rasmussen says.



Donald Rasmussen, 84, is a pulmonologist in Beckley, W.Va. He figures he's tested 40,000 coal miners in the last 50 years. *David Deal for NPR*

Federal records obtained by CPI and NPR under the Freedom of Information Act show thousands of coal miners were exposed to excessive levels of silica in each of the last 25 years. Since 1987, coal mining companies and government inspectors turned in more than 113,000 valid mine dust samples. Roughly 52 percent of those samples exceeded federal standards. In 1998 alone, about 65 percent of the valid silica samples violated the standard.

Silica exposure prompts a call for something that might seem unexpected from the National Mining Association (NMA): more regulation. The industry group wants a crackdown focused specifically on silica in the Appalachian region where black lung is resurgent.

"These people are being exposed [to] three to four times the silica exposures for periods over 20 years. [They have] a chest full of silica and nothing's been done about it," says Bob Glenn, a black lung consultant for NMA.

Excess silica forces mining companies to meet a lower standard for coal dust. The idea is that less exposure to coal dust means less exposure to silica. The federal Mine Safety and Health Administration (MSHA) proposes toughening the coal dust standard by slashing exposure limits in half (to 1 milligram per cubic meter of air).

Mine Dust Standards Vs. Protection

Coal dust measurements taken by MSHA and the industry show that coal mines already meet the lower standard and have for years. But the industry still opposes the new standard because it would broadly apply to coal dust and to all mines everywhere.



Mark McCowan, 47, was diagnosed with the worst stage of black lung only five years after an X-ray showed he had no sign of the disease. David Deal for NPR

In a <u>companion story</u> to the NPR/CPI investigation, veteran coal industry reporter Ken Ward Jr. of *The Charleston Gazette* reviews 40 years of attempts to strengthen protection for miners. Ward quotes former MSHA official Celeste Monforton, a worker safety advocate now at George Washington University: "We can't get a regulation out to save our souls." And, as Ward reports, "miners are left with the same system that experts have agreed hasn't worked for decades."

Since 1970, when mine dust controls began, black lung contributed to the deaths of more than 70,000 miners. The federal government and the industry spent \$45 billion compensating the victims, including McCowan, and their families.

"Now it feels like I've got a heavy wet sack on each lung," McCowan says, between long, deep breaths.
"Breathing has become a conscious effort. ... It seems like I give up a little bit of my world each day, that it gets smaller and smaller."

Attachment 32

Advanced Black Lung Cases Surge In Appalachia

December 15, 2016



Radiologist Brandon Crum and former coal miner Mackie Branham, 39, view an X-ray of Branham's diseased lung at Crum's black lung clinic in Coal Run Village, Ky. Howard Berkes/NPR

Across Appalachia, coal miners are suffering from the most serious form of the deadly mining disease black lung in numbers more than 10 times what federal regulators report, an NPR investigation has found.

The government, through the National Institute for Occupational Safety and Health, reported 99 cases of "complicated" black lung, or progressive massive fibrosis, throughout the country the last five years.

But NPR obtained data from 11 black lung clinics in Virginia, West Virginia, Pennsylvania and Ohio, which reported a total of 962 cases so far this decade. The true number is probably even higher, because some clinics had incomplete records and others declined to provide data.

"The actual extent of PMF in U.S. coal miners remains unclear," says the report, which appears in this week's issue of the *Morbidity and Mortality Weekly Report*, published by the Centers for Disease Control and Prevention.

BLACK LUNG RETURNS TO COAL COUNTRY

Spike In Black Lung Cases Strains Federal Benefits Program

"I can't say that I've heard really anything worse than this in my career," says Robert Cohen, a pulmonologist at the University of Illinois, Chicago who studies and tracks black lung.

"I can't think of anything in this particular field ... that's more frightening than this," Cohen adds.

Edward "Lee" Petsonk of West Virginia University has spent three decades addressing the disease and finds NPR's numbers "very disheartening, very disappointing."

"I've spent much of my career trying to find ways to better protect miners' respiratory health," Petsonk says. "It's almost like I've failed."

NIOSH released a report Thursday, published in the Morbidity and Mortality Weekly Report, which focuses on a small health clinic in Kentucky with 60 cases alone of PMF in 20 months. The report acknowledges cases are being missed by the government's count; it concludes: "The actual extent of PMF in U.S. coal miners remains unclear."

"The more I talk, the more I get out of breath"

Mackie Branham, 39, of Elkhorn Creek, Ky., spent 19 years mining coal until he was diagnosed with complicated black lung. He ran monstrous mining machines and drilled bolts into mine roofs — occupations NIOSH says can involve excessive mine dust exposure. He worked double shifts and sevenday weeks every chance he had.

His gallbladder was removed one day and he says he was back at work the next. He took two days, he says, after knee surgery, before working a 12-hour shift drilling bolts. But severe breathing problems forced him to leave work in March. And he struggles for every breath now.

"My dad has got it. Everybody that has got it, got it when they had like first stage or so. I'll probably be the first born to be this bad in the family," Branham says, describing a family legacy of black lung.

"They can't breathe but they can still get up and walk around and do stuff. The more I talk, the more I get out of breath. It's like I ain't got no capacity."



The Sidney Coal Co.'s Coal Preparation Plant in Sidney, Ky., in 2006.

Brian Tietz/AP

Branham was diagnosed with PMF at United Medical Group, a clinic in Coal Run Village, Ky., that was the subject of the NIOSH study. Radiologist Brandon Crum was alarmed by the numbers of miners coming in with such severe disease, including some like Branham, who were in their 30s and 40s and worked less than 20 years underground. So he contacted NIOSH researchers.

"I think the percentage of black lung that we're seeing now here in central Appalachia is unprecedented in any recorded data that I can find anywhere," Crum says. "In this clinic we're roughly around 9 to 10 percent complicated rate, which is around three times higher than even the highest reported numbers."

NIOSH researchers gathered at the clinic and verified the diagnoses. They, too, were alarmed.

Black Lung Returns To Coal Country

"The current numbers are unprecedented by any historical standard," says NIOSH epidemiologist Scott Laney, who has focused on black lung as well as the recent Ebola outbreak in Africa.

"We had not seen cases of this magnitude ever before in history in central Appalachia."

Crum tells NPR he diagnosed 10 more cases of PMF since Laney and his colleagues left the clinic.

In three years, 644 cases

Life with PMF is bleak. It's incurable and fatal.

Fifty-three-year-old Charles Wayne Stanley of Pound, Va., is matter-of-fact about his future.

"Staying on oxygen 24/7, dying of suffocation, that's what I've got to look forward to," Stanley says, as he sits in a clinic in St. Charles, Va.

"I've seen it too many times. My wife's grandpa ... [I] watched him take his last breath. I watched my uncle die with black lung. You literally suffocate because you can't get enough air. That's my prospects."

Stanley says his diagnosis includes black lung and silicosis.

In just the last three years, 644 cases of complicated black lung were diagnosed at Stone Mountain Health Services, which operates black lung clinics in St. Charles and two other Virginia communities. That's six times the NIOSH national count in nearly half the time.



Ron Carson is the director of the Black Lung Program at Stone Mountain Health Services in St. Charles, Va. "Something major is going on," he says. Howard Berkes/NPR "I'm not an epidemiologist or a scientist or a doctor," says Ron Carson, who manages the clinics. "I just see the results that come through the doors, and something is going on. Something major is going on."

Laney and his colleagues acknowledge in their paper that they have missed hundreds of cases with their national surveillance program. By law, they can X-ray only working miners and the testing is voluntary. NIOSH data show most miners avoid that testing. Only 17 percent of all working Kentucky miners were tested in the NIOSH program since 2011.

Stanley waited until he was out of work, after 30 years mining coal, before he got his first chest X-ray. Miners avoid the NIOSH testing, he says, because they worry it could cost them their jobs.

"If you're working and you go and have that stuff done and the company finds out about it, they'll find a way to get rid of you," Stanley says. "As long as you're working and producing you're an asset. But now when you get something wrong with you, you become a liability. And they'll find a way to get rid of you."

The last company a miner worked for (for at least a year) is saddled with black lung benefits payments and medical care — even if the miner spent 20 years working somewhere else in excessive dust. It's the last employer who pays.

But it's against the law to punish or fire miners for getting X-rays or being diagnosed with disease. Bruce Watzman of the National Mining Association also says mining companies are not supposed to see the X-rays.

"Those results are not shared with any employer. It's at the miner's discretion the way the program operates today when and if to divulge that information," Watzman says.

Still, the fear is widespread. So missing from the official NIOSH counts in the last 40 years are the working miners avoiding X-rays, and miners who are retired or laid off.

More than 40,000 miners lost their jobs since 2010. Six hundred mines have closed. And those out of work are now flocking to clinics to get screened for the disease and apply for black lung benefits. Last year alone, 3,000 miners showed up at the Stone Mountain clinics.

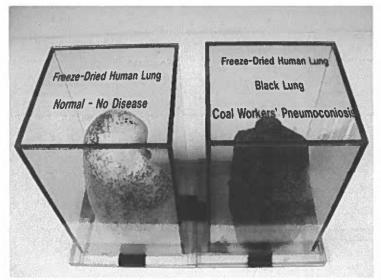
"I'm seeing miners now feeling that there's no hope. I think that they have really come to the realization that there's other energy out there now that is going to override any coal," Carson says.

With the increased testing, more cases of complicated black lung are being diagnosed.

"Pure rock dust"

Cohen, Laney and other black lung experts believe thinner coal seams in central Appalachia are likely to blame for spikes in complicated black lung. The thickest seams are mostly gone. The thin seams that remain have coal embedded in rock, and that rock contains quartz. Cutting quartz and coal together results in mine dust that includes silica, which is especially toxic in lung tissue. Stanley worked in so much dust he labeled his mining machine the dust dragon.

"They kept getting less coal and more rock. So you're cutting 19 inches of coal, you're cutting 50-60 inches of rock," Stanley recalls. "And the more rock you cut the more dust you're going to eat."



A display case at NIOSH shows a normal lung and a diseased black lung from inhaling coal dust and other harmful particles while coal mining.

Howard Berkes/NPR

There's also the practice of slope mining, where crews cut solid rock to reach coal seams. Burnham did that in Kentucky for six straight months, working 14 16-hour shifts at one point.

It was "pure rock dust," he says. "I had my respirators on and you'd actually have to remove it to help take a breath every once in a while because the dust packed so much around your filters you couldn't get no air in."

Protective masks are among the controls that are supposed to prevent inhalation of coal and silica dust. Robust ventilation in mines is supposed to sweep dust away. Water sprays are used to tamp down dust.

Kentucky miner Barney Stanton says those things didn't always work, even when most of the companies he worked for provided proper safety gear.

"It's hard to wear a mask and do a physical job," he says. "Just trying to do your job, you breathe so hard the dust will come in around the mask."

Stanton has been diagnosed with the most serious stage of PMF and is awaiting a lung transplant.

"The mining game is a numbers game," Branham says. "If you don't produce coal, they'll put somebody else in your spot that can. If I've got another man on the other side of the mines, he's cutting more coal than me, it's not going to look good on me. I just thought about my family to be honest with you."

Mining jobs are often the best-paying jobs in central Appalachia, where there generally are few other options for work.

New rules in place, but a decade to see results

New and tougher federal limits on mine dust exposure fully took effect in August, and they get even tougher when there's excessive silica. Simple black lung and PMF can take a decade or longer to develop, so the spike in disease is not an indication that new limits are failing, says Watzman of the National Mining Association. "So I think we're talking about historic exposures and not the exposures we're seeing today."

Watzman's group sued to keep the new dust rules from taking effect, but he acknowledges positive impact.

"I think that miners that are working today are better protected because the silica levels have come down," he says.

Silica dust is down, on average, 50 percent since 2009, according to the federal Mine Safety and Health Administration, whose director is Joe Main.

"I think if the rules are followed as they are prescribed we would not have these diseases," Main says, while also posing this question: "Is the strength of the rules that are in place adequate enough to protect miners? I think that's the question of the day."

There are some holes in the new rules when it comes to silica. For example, it can take a week or more to detect silica in dust samples, so excessive exposure isn't quickly addressed. Also, the U.S. Department of Labor has failed to take action on proposed dust rules specifically targeting silica. Every other industry cutting rock has strict limits on silica exposure, except mining.

Main, whose tenure will end with the change in administrations, wouldn't commit to a silica limit.

"I think if the evidence points in that direction then that needs to be done," he says.



A NIOSH black lung surveillance van at the fire station in Wharton, W.Va., in 2012. Howard Berkes/NPR

It'll be a decade or more before the effectiveness of the new rules is known, because it takes that long to detect the disease in lungs. In the meantime, there are the cases NPR has identified. According to year-by-year data reported by NIOSH, our count this decade (962 cases) is more than double the cases NIOSH counted in the last 40 years (441).

NPR also did not receive complete numbers from some clinics and did not get data from eight others in the heart of the region experiencing the spike. So there are very likely many more cases that are uncounted.

That suggests more and more severely diseased miners will be seeking state or federal black lung benefits, which concerns Evan Smith, an attorney at the Appalachian Citizens Law Center in Whitesburg, Ky., which helps miners file for benefits.

"You're just putting more people into the system that need compensation, so the more people we have moving into the system, the more potential burden it places on the taxpayers," Smith says.

There are also younger miners now being diagnosed, so benefits payments and health care may be required longer. There may be more demand for expensive lung transplants.

"The treatments run from a half-million to a million dollars," notes Rep. Bobby Scott, D-Va., the ranking member of the House Committee on Education and the Workforce. "So, if there are cases out there that have not been counted then we have a lot of expenses [coming] that we don't expect."

That increased demand comes as the Black Lung Disability Trust Fund is stressed. The fund is nearly \$6 billion in debt. It has taken on 1,000 claims that were covered by self-insured mining companies until they went bankrupt. And the coal excise tax that supports the fund is set for a 50 percent cut in two years.

"I think there are real reasons to be concerned about the viability of the trust fund," says Smith.

There is also concern involving possible repeal of the Affordable Care Act, which contains a provision that makes it easier for miners to get black lung benefits.

Scott has asked the Government Accountability Office to investigate the trust fund's ability to continue to pay claims. He also wants more accurate numbers of miners afflicted with progressive massive fibrosis.

"We have to get the numbers straight to make sure they're being properly reported," he says.



Branham wears reflective mining pants in his home in Elkhorn City, Ky. Branham has advanced stage black lung and was forced to quit mining earlier this year.

Benny Becker/Ohio Valley ReSource

In Kentucky, Mackie Branham has more immediate concerns. He heard this week he'll be getting state black lung benefits soon. He is hoping the first check arrives before Christmas so he can buy presents for his five children.

He is also left gasping for air and grasping for words. He worked hard to feed his family and now, as his life leaves him one breath at a time, he wonders about the cost.

Branham has "never been scared of death," he says, as he chokes back tears. "It don't bother me a bit. It's just not seeing my kids grow up. But if I had it to do over I would do it again, if that's what it took to provide for my family as long as I have."

Branham hopes for a lung transplant, which may give him five to 10 more years of life.

Jeff Young and Benny Becker of Ohio Valley ReSource contributed to this story. Additional reporting on this story is available <u>here</u> and <u>here</u>.